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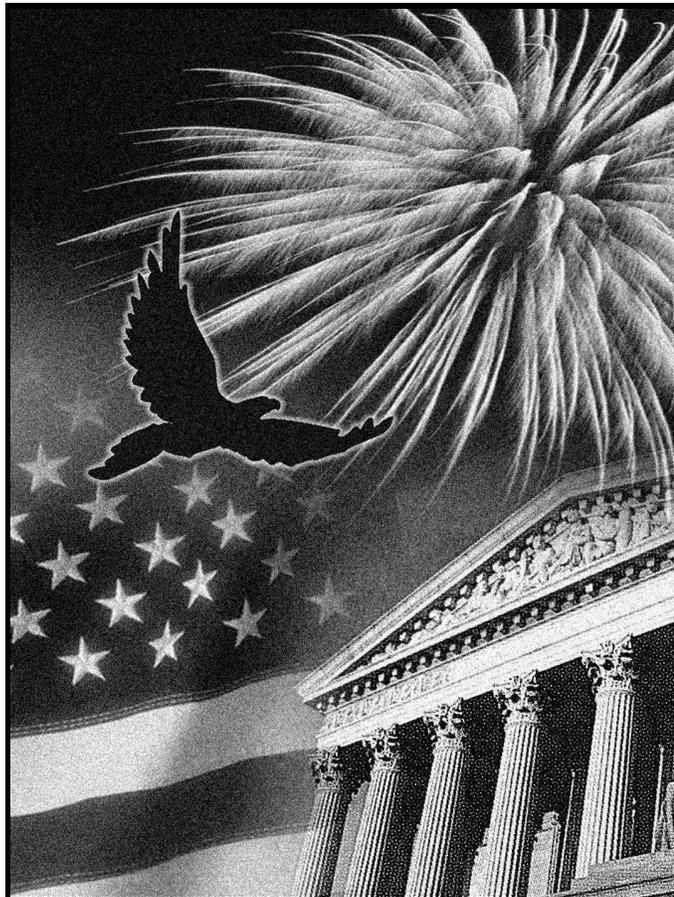
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# Bankruptcy Tax Guide



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## What's New

**Catch-up contributions for IRC section 401(k) participants whose employer previously filed for bankruptcy.** Under the Pension Protection Act of 2006, P.L. 109-280, if you participated in an IRC section 401(k) plan and the employer who maintained the plan filed for bankruptcy in an earlier year, you may be able to contribute up to \$7,000 to your traditional or Roth IRA. See Publication 590, Individual Retirement Arrangements (IRAs), for details.

**The Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005.** On April 20, 2005, BAPCPA became law. However, most of BAPCPA's provisions became effective 180 days after the bill was signed into law, or October 17, 2005. The BAPCPA provides that:

- Debtors filing under chapters 7, 11, 12, and 13 of the Bankruptcy Code must file all applicable federal, state, and local tax returns that become due after a case commences. Failure to file tax returns timely or obtain an extension can cause a bankruptcy petition to be converted to another chapter or dismissed. In chapter 13 cases, the debtor must file all required tax returns for tax periods ending within 4 years of the filing of the bankruptcy petition.
- The confirmation of a plan under chapter 11 does not discharge a corporate debtor from tax debts for which the debtor filed a fraudulent return or willfully attempted to evade or defeat tax.

- In chapter 11 cases of individuals, wages and income from self-employment earned during the bankruptcy case are property of the estate. Income that is property of the estate should be reported on the bankruptcy estate's tax return.
- Withheld taxes, taxes for which a return was not filed, taxes for which a return was untimely filed within 2 years of the bankruptcy, and taxes that the taxpayer attempted to evade or defeat are now excepted from the chapter 13 discharge.

## Reminder

**Photographs of missing children.** The IRS is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

## Introduction

This publication covers the federal income tax aspects of bankruptcy. Bankruptcy proceedings begin with the filing of a petition in bankruptcy court, and that filing creates the bankruptcy estate.

- The bankruptcy estate generally consists of all of the assets of the person or entity filing the bankruptcy petition.
- The bankruptcy estate is treated as a separate taxable entity if the bankruptcy petition is filed by an individual under chapter 7 or 11 of the Bankruptcy Code, discussed later.
- The tax obligations of taxable estates are discussed later under *Taxes and the Bankruptcy Estate*.
- Generally, when a debt owed to another person or entity is canceled, the amount canceled or forgiven is considered income that is taxed to the person owing the debt. If a debt is canceled under a bankruptcy proceeding, the amount canceled is not income. However, the canceled debt reduces other tax benefits to which the debtor would otherwise be entitled. See *Debt Cancellation*, later.



*This publication is not intended to cover bankruptcy law in general, or to provide detailed discussions of the tax rules for the more complex corporate bankruptcy reorganizations or other highly technical transactions. Additionally, this publication is not updated on an annual basis and may not reflect recent developments in bankruptcy or tax law. If you need more guidance on the bankruptcy or tax laws applicable to your case, you should seek professional advice.*

## Useful Items

You may want to see:

### Publication

- 225** Farmer's Tax Guide
- 525** Taxable and Nontaxable Income
- 536** Net Operating Losses (NOLs) for Individuals, Estates, and Trusts
- 538** Accounting Periods and Methods
- 544** Sales and Other Dispositions of Assets
- 551** Basis of Assets
- 4492** Information for Taxpayers Affected by Hurricanes Katrina, Rita, and Wilma
- 4681** Canceled Debts, Foreclosures, Repossessions, and Abandonments

### Form (and Instructions)

- SS-4** Application for Employer Identification Number, and separate instructions
- 982** Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)
- 1040** U.S. Individual Income Tax Return, and separate instructions
- Schedule SE (Form 1040)** Self-Employment Tax
- 1040X** Amended U.S. Individual Income Tax Return, and separate instructions
- 1041** U.S. Income Tax Return for Estates and Trusts, and separate instructions
- 1041-ES** Estimated Income Tax for Estates and Trusts
- Schedule I (Form 1041)** Alternative Minimum Tax (AMT), and separate instructions.
- 4506** Request for Copy of Tax Return
- 4506-T** Request for Transcript of Tax Return
- 4852** Substitute for Form W-2, Wage and Tax Statement, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
- 4868** Application for Automatic Extension of Time To File U.S. Individual Income Tax Return
- 7004** Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns

See *How To Get Tax Help*, later, for information about getting these publications and forms.

# Bankruptcy Code Tax Compliance Requirements

## Tax Returns Due After the Bankruptcy Filing

For all bankruptcy cases filed after October 16, 2005, the Bankruptcy Code provides that if the debtor does not file a tax return that becomes due after the commencement of the bankruptcy case, or obtain an extension for filing the return before the due date, the taxing authority may request that the court either dismiss the case or convert the case to a case under another chapter of the Bankruptcy Code. If the debtor does not file the required return or obtain an extension within 90 days after the request is made, the bankruptcy court must dismiss or convert the case.

## Tax Returns for Tax Periods Ending Before the Petition Date in Chapter 13 Cases

For bankruptcy cases filed after October 16, 2005, the Bankruptcy Code requires chapter 13 debtors to file all required tax returns for tax periods ending within 4 years of the debtor's bankruptcy filing. All such federal tax returns must be filed with the IRS before the date first set for the first meeting of creditors. The debtor may request the trustee to hold the meeting open for an additional 120 days to enable the debtor to file the returns (or until the day the returns are due under an automatic IRS extension, if later). After notice and hearing, the bankruptcy court may extend the period for another 30 days. Failure to timely file the returns can prevent confirmation of a chapter 13 plan and result in either dismissal of the chapter 13 case or conversion of the case to a chapter 7 case.

Trustees may require the debtor to submit copies or transcripts of the debtor's returns as proof of filing. The debtor can request free transcripts of the debtor's income tax returns by filing Form 4506-T with the IRS or by placing a request on the IRS's free Automated Delivery Service (ADS), available by calling 1-800-829-1040. If requested through ADS, the transcript will be mailed to the debtor's most current address according to the IRS's records. Transcripts requested using Form 4506-T may be mailed to any address, including to the attention of the trustee in the debtor's bankruptcy case. Transcripts are normally mailed within 10 to 15 days of receipt of the request by the IRS. A transcript contains most of the information on the debtor's filed return, but it is not a copy of the return. To request a copy of the debtor's filed return, file Form 4506. It may take up to 60 days for the IRS to provide the copies after receipt of the debtor's request, and there is a fee of \$57.00 per tax return for copies of the returns.

## Tax Returns and Payment of Taxes in Chapter 11 Cases

For bankruptcy cases filed after October 16, 2005, the Bankruptcy Code provides that a

chapter 11 debtor's failure to timely file tax returns and pay taxes owed after the date of the order for relief (the bankruptcy petition date in voluntary cases) is cause for dismissal of the chapter 11 case, conversion to a chapter 7 case, or appointment of a chapter 11 trustee.

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## Individuals in Chapter 12 or 13

The filing of a bankruptcy petition creates the bankruptcy estate. The bankruptcy estate consists of property that belongs to the debtor as of the filing date. The bankruptcy estate property is used to pay the debtor's creditors. The bankruptcy estate is not treated as a separate entity for tax purposes when an individual files a petition under chapter 12 (Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income) or 13 (Adjustment of Debts of an Individual with Regular Income) of the Bankruptcy Code. The individual should continue to file the same federal income tax returns that were filed prior to the bankruptcy petition. Chapter 13 reorganizations are not available to corporations or partnerships and are only available to individuals.

On the debtor's return, report all income received during the entire year and deduct all allowable expenses. Do not include in income any debts canceled because of the debtor's bankruptcy. To the extent the debtor has any losses, credits, or basis in property that were reduced because of canceled debt, these reductions must be included on the debtor's return. See *Debt Cancellation*, later.

For information about determining the tax due and paying tax, see *Tax Determination and Payment*, later.

**Interest on trust accounts in chapter 13 proceedings.** If the debtor is an individual debtor under chapter 13, do not include interest earned on amounts held by the trustee in trust accounts prior to distribution to the debtor's creditors as income on the debtor's return. This interest is not available either to the debtor or the debtor's creditors. It is available only to the trustee, and is not taxable to the trustee as individual income.

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## Individuals in Chapter 7 or 11

If the debtor is an individual who files for bankruptcy under chapter 7 or 11, the bankruptcy estate is treated as a new taxable entity, separate from the individual taxpayer.

The estate in a chapter 7 case is represented by a trustee. The trustee is appointed under the Bankruptcy Code to administer the estate and liquidate any nonexempt assets of the estate. In chapter 11, the debtor often remains in control of the assets as a "debtor-in-possession" and acts as the bankruptcy trustee. See *Taxes and the Bankruptcy Estate*, later.

If the debtor filed a chapter 7 or 11 case, the debtor must file a Form 1040 for the tax year involved. The bankruptcy trustee files a Form 1041 for the bankruptcy estate. If the debtor is in

chapter 11 bankruptcy and remain as the debtor-in-possession, the debtor must file both a Form 1040 and the Form 1041 for the bankruptcy estate (if the estate meets the return filing requirements).

If a husband and wife file a joint bankruptcy petition and their bankruptcy estates are jointly administered, their estates must be treated as two separate entities for tax purposes. Two separate tax returns must be filed (if they separately meet the filing requirements).

### Election To End Tax Year

If the debtor is an individual debtor in a chapter 7 or 11 case, the debtor may be able to elect to close the debtor's tax year for the year in which the bankruptcy petition is filed, as of the day before the date on which the bankruptcy case commences. If the debtor makes the election, the debtor's tax year is divided into 2 short tax years of less than 12 months each. The first year ends on the day before the commencement date and the second year begins on the commencement date. If the election is made, the debtor federal income tax liability for the first short tax year becomes an allowable claim against the bankruptcy estate as a claim arising before the bankruptcy filing. The tax liability for the first short tax year, not subject to discharge under the Bankruptcy Code, can be collected from the estate.

If the debtor does not make an election to end the tax year, the commencement of the bankruptcy case does not affect the debtor's tax year. Also, no part of the debtor's income tax liability for the year in which the bankruptcy case commences can be collected from the bankruptcy estate. The debtor cannot make a short-year election if the debtor has no assets in the bankruptcy estate other than exempt property.

**Making the election.** The debtor can elect to end the debtor's tax year by filing a return on Form 1040 for the first short tax year. The return must be filed on or before the 15th day of the fourth full month after the end of that first tax year.

**Example.** Jane Doe, an individual calendar year taxpayer, filed a bankruptcy petition under chapter 7 or 11 on May 8, 2007. If Jane elected to close her tax year at the commencement of her case, Jane's first short year for 2007 ran from January 1 through May 7, 2007, and closed on May 7, 2007. Jane's second short year ran from May 8, 2007, through December 31, 2007. To have a timely filed election for the first short year, Jane must file Form 1040 (or an extension) for the period January 1 through May 7 by September 15.

To avoid delays in processing the return, write "Section 1398 Election" at the top of the return. The debtor may also make the election by attaching a statement to Form 4868. The statement must say that the debtor chooses under IRC section 1398(d)(2) to close the debtor's tax year on the day before the filing of the bankruptcy case. The debtor must file Form 4868 by the due date of the return for the first short tax year. If the debtor's spouse decides to also close his or her tax year, see *Election by debtor's spouse*, next.

**Election by debtor's spouse.** If the debtor is married, the debtor's spouse may join in the election to end the tax year. If the debtor and spouse make a joint election, the debtor **must** file a joint return for the first short tax year. The debtor must make these choices by the due date for filing the return for the first short tax year. Once the choice is made, it cannot be revoked for the first year. However, the choice does not mean the debtor and the spouse must file a joint return for the second short tax year.

**Later bankruptcy of spouse.** If the debtor's spouse files for bankruptcy later in the same year, he or she may also choose to end his or her tax year, regardless of whether he or she joined in the choice to end the debtor's tax year. Because each of them has a separate bankruptcy, one or both of them may have 3 short tax years in the same calendar year. If the debtor's spouse joined in the debtor's choice, or if the debtor had not made the choice to end the tax year, the debtor can join in the spouse's choice. But if the debtor made an election and the spouse did not join in the election, the debtor cannot join in the spouse's later election. This is because the debtor and the spouse have different tax years. The debtor does not have a tax year ending the day before the spouse's filing for bankruptcy, and the debtor cannot file a joint return for a year ending on the day before the spouse's filing of bankruptcy.

**Example 1.** Paul and Mary Harris are calendar-year taxpayers. Paul's voluntary chapter 7 bankruptcy case begins on March 4.

If Paul does not make an election, his tax year does not end on March 3. If he makes an election, Paul's first tax year is January 1–March 3, and his second tax year begins on March 4. Mary could join in Paul's election as long as they file a joint return for the tax year January 1–March 3. They must make the election by July 15, the due date for filing the joint return.

**Example 2.** Fred and Ethel Barnes are calendar-year taxpayers. Fred's voluntary chapter 7 bankruptcy case begins on May 6, and Ethel's bankruptcy case begins on November 1 of the same year.

Ethel could choose to end her tax year on October 31. If Fred did not elect to end his tax year on May 5, or if he elected to do so but Ethel had not joined in his election, Ethel would have 2 tax years in the same calendar year if she decided to close her tax year. Her first tax year is January 1–October 31, and her second year is November 1–December 31.

If Fred did not end his tax year as of May 5, he could join in Ethel's choice to close her tax year on October 31, but only if they file a joint return for the tax year January 1–October 31.

If Fred elected to end his tax year on May 5, but Ethel did not join in Fred's choice, Fred could not join in Ethel's choice to end her tax year on October 31, because they could not file a joint return for that short year. They could not file a joint return because their tax years preceding October 31 were not the same.

**Example 3.** Jack and Karen Thomas are calendar-year taxpayers. Karen's voluntary chapter 7 bankruptcy case began on April 10, and Jack's voluntary chapter 7 bankruptcy case

began on October 3 of the same year. Karen chose to close her tax year on April 9 and Jack joins in Karen's choice.

Under these facts, Jack would have 3 tax years for the same calendar year if he makes the election relating to his own bankruptcy case. The first tax year would be January 1–April 9; the second, April 10–October 2; and the third, October 3–December 31.

Karen may join in Jack's election if they file a joint return for the second short tax year (April 10–October 2). If Karen does join in, she would have the same 3 short tax years as Jack. Also, if Karen joins in Jack's election, they may file a joint return for the third tax year (October 3–December 31), but they are not required to do so.

**Annualizing taxable income.** If the debtor chooses to close the tax year, the debtor must annualize the taxable income for each short tax year the same way it is done for a change in an annual accounting period. See *Short Tax Year* in Publication 538, for information on how to annualize the debtor's income and to figure the tax for the short tax year.

**Filing requirement.** If the debtor elects to end the tax year on the day before filing the bankruptcy case, the debtor must file the return for the first short tax year as explained earlier under *Making the election*.

If the debtor makes this election, the debtor must also file a separate Form 1040 for the second short tax year by the regular due date. To avoid delays in processing the return, write "Second Short Year Return After Section 1398 Election" at the top of the return.

If the bankruptcy case is later dismissed, the debtor must file amended returns to replace all full or short year returns filed as a result of the bankruptcy case. Attach a statement to the amended returns explaining why the debtor is filing an amended return. In this situation, no bankruptcy estate is created for tax purposes. Income that was or would have been reported by the bankruptcy estate must be reported on the debtor's amended returns.

## Taxes and the Bankruptcy Estate

The commencement of a bankruptcy case creates an estate, which generally includes all legal or equitable interests in property of the debtor as of the commencement of the case. There are certain exceptions. Exempt property and abandoned property are initially part of the bankruptcy estate, but are subsequently removed from the estate. Excluded property is never included in the estate.

When an individual files a bankruptcy petition under chapter 7 or 11, the bankruptcy estate is treated as a separate taxable entity from the debtor. The trustee or debtor-in-possession is responsible for preparing and filing the estate's tax returns and paying its taxes. The debtor remains responsible for filing his or her own returns and paying taxes on income that does not belong to the estate.

Before filing tax returns for the bankruptcy estate, the trustee or debtor-in-possession must obtain an employer identification number (EIN) for the estate. The trustee or debtor-in-possession uses the EIN on any tax returns filed for the estate, including estimated

tax returns. See *Employer identification number*, later.

If the debtor is an individual in a chapter 7 or 11 bankruptcy, do not include on the debtor's individual income tax return the income, deductions, or credits that belong to the bankruptcy estate. Also, do not include as income on the debtor's return any debts canceled because of bankruptcy. However, the bankruptcy estate must reduce certain losses, credits, and the basis in property (to the extent of these items) by the amount of canceled debt. See *Debt Cancellation*, later.

If the debtor is an individual in a chapter 7 or 11 case and the bankruptcy court dismissed the case, the estate is no longer treated as a separate taxable entity. The debtor is treated as if the bankruptcy petition was never filed. The debtor must file amended returns on Form 1040X to replace the returns previously filed for the bankruptcy estate. Include on the amended returns the items of income, deductions, and credits that were reported by the bankruptcy estate on its returns and were not reported on returns the debtor previously filed.

**Note.** The debtor may not be able to claim certain deductions such as administrative expenses of the estate and the bankruptcy exclusion that the estate could have claimed. Also, the bankruptcy exclusion cannot be used to exclude debt that was canceled while the debtor was under the bankruptcy court's protection. But the other exclusions (such as insolvency) may apply.

**Income of the estate in chapter 7 cases of individuals.** The gross income of the bankruptcy estate includes any of the debtor's gross income to which the estate is entitled under the Bankruptcy Code. It also includes income generated by the bankruptcy estate, from property in the estate, after the commencement of the case.

Gross income of the estate does not include amounts received or accrued by the debtor before the commencement of the case. Additionally, gross income of the estate in a chapter 7 case does not include any income that the debtor earns after the bankruptcy petition date.

**The estate income in individuals' chapter 11 cases.** For chapter 11 individual cases filed before October 17, 2005, gross income of the estate is determined in the same manner as in chapter 7 cases involving individuals. Notably, gross income of the estate generally does not include any income that the debtor earns after the commencement of the bankruptcy case.

For cases filed after October 16, 2005, earnings from services performed by an individual debtor after the commencement of the chapter 11 case are property of the bankruptcy estate under 11 U.S.C. section 1115. Under IRC section 1398(e)(1), gross income of the estate includes income that the debtor earns for services performed after the bankruptcy petition date and should be included on the estate's return in cases filed after October 17, 2005.

If a chapter 11 case is converted to a chapter 13 case, the chapter 13 estate is not a separate taxable entity and earnings from post-conversion services and income from property of the estate realized after the conversion to chapter 13 are taxed to the debtor. If the chapter 11 case is converted to a chapter 7 case, 11

U.S.C. section 1115 does not apply after conversion and:

- Earnings from post-conversion services will be taxed to the debtor, rather than the estate, and
- The property of the chapter 11 estate will become property of the chapter 7 estate.

Any income on this property will be taxed to the estate even if the income is realized after the conversion to chapter 7. If a chapter 11 case is dismissed, the debtor is treated as if the bankruptcy case had never been filed and as if no bankruptcy estate had been created.

A debtor-in-possession may be compensated by the estate for managing or operating a trade or business that the debtor conducted before the commencement of the bankruptcy case. For cases filed after October 16, 2005, such payments should be reported by the debtor as miscellaneous income on his or her individual income tax return. Amounts paid by the estate to the debtor-in-possession for managing or operating the trade or business may qualify as administrative expenses of the estate. See *Administrative expenses*, later.

**Notice to persons required to file information returns (other than Form W-2, Wage and Tax Statement) in chapter 11 cases of individuals filed after October 16, 2005.** For chapter 11 cases of individuals filed after October 16, 2005, within a reasonable time after the commencement of a chapter 11 bankruptcy case, the trustee or the debtor-in-possession should provide notification of the bankruptcy estate's EIN to persons that are required to file information returns for the bankruptcy estate's gross income, gross proceeds, or other types of reportable payments. See IRC section 6109(a)(2). Because these payments are the property of the estate under 11 U.S.C. section 1115 for chapter 11 cases filed after October 16, 2005, the payors should report the gross income, gross proceeds, or other reportable payments on the appropriate information return using the estate's name and EIN as required under the IRC and regulations (see IRC sections 6041 through 6049).

The trustee or debtor-in-possession should not, however, provide the EIN to a person filing Form W-2 reporting the debtor's wages or other compensation, as 11 U.S.C. section 1115 does not affect the determination of what are wages for purposes of federal income tax withholding or the Federal Insurance Contributions Act (FICA). See IRC sections 3121(a) and 3401(a). An employer should continue to report all wage income and tax withholding, both pre-petition and post-petition, on a Form W-2 to the debtor under the debtor's social security number.

When a chapter 11 bankruptcy case is closed, dismissed, or converted to a chapter 12 or 13 case, the bankruptcy estate ends as a separate taxable entity. The debtor should, within a reasonable time, send notice of such event to the persons previously notified of the bankruptcy case to ensure that gross income and proceeds and other reportable payments realized after the event are reported to the debtor under the correct TIN rather than the estate.

If a chapter 11 case is converted to a chapter 7 case, the bankruptcy estate will continue to

**Notice 2006-83 Statement**  
*Pending Bankruptcy Case*

The taxpayer, \_\_\_\_\_, filed a bankruptcy petition under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of \_\_\_\_\_. The bankruptcy court case number is \_\_\_\_\_. Gross income, and withheld federal income tax, reported on Form W-2, Forms 1099, Schedule K-1, and other information returns received under the taxpayer's name and social security number (or other taxpayer identification number) are allocated between the taxpayer's TIN and the bankruptcy estate's EIN as follows, using [describe allocation method]: \_\_\_\_\_

Year	Taxpayer	Estate
1. Form W-2, Payor: _____ Withheld income tax shown on Form W-2	\$ _____	\$ _____
2. Form 1099-INT Payor: _____ Withheld income tax (if any) shown on Form 1099-INT	\$ _____	\$ _____
3. Form 1099-DIV Payor: _____ Withheld income tax (if any) shown on Form 1099-DIV	\$ _____	\$ _____
4. Form 1099-MISC Payor: _____ Withheld income tax (if any) shown on Form 1099-MISC	\$ _____	\$ _____

exist as a separate taxable entity. Gross income (other than post-conversion income from the debtor's services), gross proceeds, or other reportable payments should continue to be reported to the estate if they are property of the chapter 7 estate. Income from services performed by the debtor after conversion of the case to chapter 7 is not property of the chapter 7 estate. After the conversion, the debtor should notify payors required to report the debtor's non-employee compensation that compensation earned after the conversion should be reported using the debtor's name and TIN, and not the estate's name and EIN.

The debtor in a post-BAPCPA chapter 11 case is not required to file a new Form W-4 with an employer solely because the debtor filed a chapter 11 case and the post-petition wages are includible in the estate's income and not the debtor's income. However, a new Form W-4 may be necessary if the debtor is no longer entitled to claim the same number of allowances previously claimed because certain deductions or credits now belong to the estate. See Employment Tax Regulations section 31.3402(f)(2)-1. The debtor may wish to file a new Form W-4 to increase the income tax withheld from post-petition wages allocated to the estate to avoid having to make estimated tax payments for the estate. See IRC section 6654(a).

**Self-employment taxes in chapter 11 cases of individuals filed after October 16, 2005.** IRC section 1401 imposes a tax upon the self-employment income of every individual. Self-employment income is the net earnings from self-employment derived by an individual. Net earnings from self-employment are gross income from self-employment less deductions attributable to the business. Neither 11 U.S.C. section 1115 nor IRC section 1398 addresses the application of the self-employment tax to the earnings from the individual debtor's continuing services. Because the debtor continues to derive gross income from the performance of services as a self-employed individual after the commencement of the bankruptcy case, the debtor must continue to report the debtor's individual income on Schedule SE (Form 1040) of the debtor's income tax return. The schedule includes the self-employment income earned post-petition and the attributable deductions. The debtor must pay any self-employment tax imposed by IRC section 1401.

**Employment taxes and the obligation to file Form W-2 in chapter 11 cases of individuals filed after October 16, 2005.** Chapter 11 cases of individuals filed after October 16, 2005, post-petition wages earned by a debtor are generally treated as gross income of the estate. The reporting and withholding obligations of a debtor's employer have not changed. 11 U.S.C. section 1115 does not affect the determination of wages under the FICA. See IRC section 3121(a). Similarly, the determination of wages for Federal Unemployment Tax Act (FUTA) tax or Federal Income Tax Withholding purposes is not affected. See IRC sections 3306(b) and 3401(a). Because 11 U.S.C. section 1115 does not affect the application of FICA tax, FUTA tax, or Federal Income Tax Withholding wages of a chapter 11 debtor, an employer should continue to report the wages and tax withholding on a Form W-2 issued under the debtor's name and social security number.

**Allocation of income and credits on information returns and required statement for returns for chapter 11 cases of individuals filed after October 16, 2005.** For chapter 11 cases, if an employer issues a Form W-2 reporting all of the debtor's wages, salary, or other compensation for a calendar year, and a portion of the earnings represent post-petition services includible in the estate's gross income, the Form W-2 amounts must be allocated between the estate and the debtor. The debtor-in-possession or the trustee must allocate the amounts reported in box 1 and the withheld income tax reported in box 2 of Form W-2 between the debtor and the estate. The allocations must reflect that the debtor's gross earnings from post-petition services and gross income from post-petition property are, generally, includible in the estate's gross income and not the debtor's gross income. The debtor and trustee may use a simple percentage method to allocate income and withheld income tax. The same method must be used to allocate the income and the withheld tax.

**Example.** If 20% of the wages reported on Form W-2 for a calendar year were earned after the commencement of the case and are included in the estate's gross income, 20% of the withheld income tax reported on Form W-2 must also be claimed as a credit on the estate's income tax return. Likewise, 80% of wages must

be reported by the debtor and 80% of the withheld income tax must be claimed as a credit on the debtor's income tax return. See IRC section 31(a).

If information returns are issued to the debtor for gross income, gross proceeds, or other reportable payments that should have been reported to the bankruptcy estate, the debtor-in-possession or trustee must allocate the improperly reported income in a reasonable manner between the debtor and the estate. In general, the allocation must ensure that any income and income tax withheld attributable to the post-petition period is reported on the estate's return, and any income and income tax withheld attributable to the pre-petition period is reported on the debtor's return.

The debtor must attach a statement to his or her income tax return stating that the return is filed subject to a chapter 11 bankruptcy case. The statement must also:

- Show the allocations of income and withheld income tax,
- Describe the method used to allocate income and withheld tax, and
- List the filing date of the bankruptcy case, the bankruptcy court in which the case is pending, the bankruptcy court case number, and the bankruptcy estate's EIN.

**Note.** The debtor-in-possession or trustee must attach a similar statement to the estate's income tax return.

The above Notice 2006-83 Statement, 2006-40 I.R.B. 596, may be used by debtors, debtors-in-possession, and trustees.

**Treatment of deductions and credits.** A bankruptcy estate may take deductions or credits in the same way that a debtor would have deducted or credited them had he or she continued in the same trade, business, or activity. Allowable expenses include administrative expenses, such as attorney fees and court costs. These are discussed later under *Administrative expenses*.

The bankruptcy estate figures its taxable income the same way as an individual figures taxable income. The estate uses the rates for a married individual filing separately to figure the tax on its taxable income. The estate can take one personal exemption and either individual (itemized) deductions or the basic standard deduction for a married individual filing a separate return. The estate cannot take the higher standard deduction allowed for married persons filing separately who are 65 or older or blind.

**Transfer of assets between debtor and estate.** Bankruptcy law determines which of a debtor's assets become part of a bankruptcy estate. A transfer (other than by sale or exchange) of an asset from the debtor to the bankruptcy estate is not treated as a disposition for income tax purposes. Consequently, the transfer does not result in gain or loss, recapture of deductions or credits, or acceleration of income or deductions. For example, the transfer of an installment obligation to the estate would not accelerate gain under the rules for reporting installment sales. The estate is treated the same way the debtor would be regarding the transferred asset.

When the bankruptcy estate is terminated or dissolved, any resulting transfer (other than by sale or exchange) of the estate's assets back to the debtor is also not treated as a disposition. The transfer does not result in gain or loss, recapture of deductions or credits, or acceleration of income or deductions to the estate.

The abandonment of property by the estate to the debtor is a nontaxable disposition of property. If the debtor received abandoned property from the estate, the debtor has the same basis in the property that the estate had.

**Attribute carryovers.** The bankruptcy estate must treat its tax attributes the same way that the debtor would have treated them. These items must be determined as of the first day of the debtor's tax year in which the bankruptcy case begins. The bankruptcy estate gets the following tax attributes from the debtor:

1. NOL carryovers,
2. Carryovers of excess charitable contributions,
3. Recovery of tax benefit items,
4. Credit carryovers,
5. Capital loss carryovers,
6. Basis, holding period, and character of assets,
7. Method of accounting,
8. Passive activity loss and credit carryovers,
9. Unused at-risk deductions, and
10. Other tax attributes as provided in regulations.

Certain tax attributes of the estate must be reduced by any excluded income from cancellation of debt occurring in a bankruptcy proceeding. See *Debt Cancellation*, later. When the estate is terminated (for example, when the case ends), the debtor assumes any remaining tax attributes that were taken over by the estate and generally assumes any of the listed attributes that arise during the administration of the estate.

**Passive and at-risk activities.** For bankruptcy cases beginning after November 8, 1992, treat passive activity carryover losses and credits and unused at-risk deductions as tax attributes that the debtor passes to the bankruptcy estate and the estate passes back to the debtor when the estate terminates. Additionally, transfers to the debtor (other than by sale or exchange) of interests in passive or at-risk activities are treated as exchanges that are not taxable. These transfers include the return of exempt property and the abandonment of estate property to the debtor.

**Administrative expenses.** The bankruptcy estate is allowed a deduction for administrative expenses and fees or charges assessed it. These expenses are generally deductible as itemized deductions and are not subject to the 2% floor on miscellaneous itemized deductions. However, administrative expenses attributable to the conduct of a trade or business by the bankruptcy estate or the production of the estate's rents or royalties are deductible in arriving at adjusted gross income.

The expenses may be disallowed under other provisions of the IRC (such as disallowing certain capital expenditures, taxes, or expenses relating to tax-exempt interest). These expenses can only be deducted by the estate, and never by the debtor.

If the administrative expenses of the bankruptcy estate are more than its gross income for a tax year, the excess amount may be carried back 3 years and forward 7 years. The amounts can only be carried to a tax year of the estate and never to the debtor's tax year. The excess amount to be carried back or forward is treated like an NOL and must first be carried back to the earliest year possible. For a discussion of the NOL, see Publication 536.

**Change of accounting period.** The bankruptcy estate may change its accounting period (tax year) once without IRS approval. This rule allows the bankruptcy trustee to close the estate's tax year early, before the expected termination of the estate. The trustee can then file a return for the first short tax year to get a quick determination of the estate's tax liability.

**Carrybacks from the debtor's activities.** The debtor cannot carry back any NOL or credit carryback from a tax year ending after the bankruptcy case has begun to any tax year ending before the case began.

**Carrybacks from the estate.** If the bankruptcy estate has an NOL that did not pass to the estate from the debtor under the attribute carryover rules, the estate can carry the loss back not only to its own earlier tax years but also to the debtor's tax years before the year the bankruptcy case began. The estate may also carry back excess credits, such as the general business credit, to the pre-bankruptcy years.

## Return Requirements of the Estate and Payment of Tax

The trustee or debtor-in-possession must file an income tax return on Form 1041 if the estate has gross income that meets or exceeds the amount required for filing. This amount is the total of the personal exemption amount and the basic standard deduction for a married individual filing separately. See the Form 1041 instructions for the current year's amount.

If a return is required, the trustee or debtor-in-possession completes the identification area at the top of the Form 1041 and lines 23–29 and signs and dates it. Form 1041 is a transmittal for Form 1040. Complete Form 1040 and figure the tax using the tax rate schedule for a married person filing separately. In the top margin of Form 1040, write "Attachment to Form 1041. **DO NOT DETACH.**" Attach Form 1040 to the Form 1041.

**Note.** The filing of a tax return for the bankruptcy estate does not relieve the individual debtor of his or her tax filing requirement.

**Estimated tax.** The trustee or debtor-in-possession must pay estimated tax (if any is due) for the bankruptcy estate. See the Form 1041-ES instructions for information on the dollar limits and exceptions to filing Form 1041-ES and paying estimated tax.

**Employer identification number.** The trustee or debtor-in-possession must obtain an EIN

for a bankruptcy estate if the estate must file any form, statement, or document with the IRS. The trustee uses this EIN on any tax return filed for the bankruptcy estate, including estimated tax returns. The trustee can obtain an EIN for a bankruptcy estate by applying:

- Online by clicking on the EIN link at [www.irs.gov/businesses/small](http://www.irs.gov/businesses/small). The EIN is issued immediately once the application information is validated.
- On the telephone at 1-800-829-4933, or
- By mailing or faxing Form SS-4.

Trustees representing ten or more bankruptcy estates (other than estates that will be filing employment or excise tax returns) may request a series or block of EINs.

**Note.** The social security number of the individual debtor cannot be used as the EIN for the bankruptcy estate.

**Employment taxes.** The trustee or debtor-in-possession must withhold income and social security taxes and file employment tax returns for any wages paid by the trustee or debtor, including wage claims paid as administrative expenses. Until these employment taxes are deposited as required by the IRC, they should be set aside in a separate bank account to ensure that funds are available to satisfy the liability. If the employment taxes are not paid as required, the trustee may be held personally liable for payment of the taxes. See Publication 15, Circular E, Employer's Tax Guide, for details on employer tax responsibilities.

The trustee has the duty to prepare and file Forms W-2 for wage claims paid by the trustee, regardless of whether the claims accrued before or during bankruptcy. If the debtor fails to prepare and file Forms W-2 for wages paid before bankruptcy, the trustee should instruct the employees to file a Form 4852, or Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., with their individual income tax returns.

**Disclosure of return information.** The debtor's income tax returns for the year the bankruptcy case begins and for earlier years are, upon written request, open to inspection by or disclosure to the trustee. If the bankruptcy case was not voluntary, disclosure cannot be made before the bankruptcy court has entered an order for relief, unless the court rules that the disclosure is needed for determining whether relief should be ordered.

The bankruptcy estate's tax returns are also open, upon written request, to inspection by or disclosure to the individual debtor. Disclosure of the estate's return to the debtor may be necessary to enable the debtor to determine the amount and nature of the tax attributes, if any, that the debtor must assume when the bankruptcy estate terminates.

## Example

**Caution.** This publication is not revised annually. Future changes to the forms and their instructions may not be reflected in this example.

On December 15, 2007, Thomas Smith filed a bankruptcy petition under chapter 7. Joan Black was appointed trustee to administer the estate and to distribute the assets.

The estate received the following assets from Mr. Smith:

1. A \$100,000 certificate of deposit,
2. Commercial rental real estate with a fair market value (FMV) of \$280,000, and
3. His personal residence with an FMV of \$200,000.

Also, the estate received a \$251,500 capital loss carryover.

Mr. Smith's bankruptcy case was closed on December 31, 2008. During 2008, Mr. Smith was relieved of \$70,000 of debt by the court. The estate chose a calendar year as its tax year. Joan, the trustee, reviews the estate's transactions and reports the taxable events on the estate's final return.

**Schedule B (Form 1040).** The certificate of deposit earned \$5,500 of interest during 2008. Joan reports this interest on Schedule B. She completes this schedule and enters the result on Form 1040.

**Form 4562.** Joan enters the depreciation allowed on Form 4562. She completes the form and enters the result on Schedule E.

**Schedule E (Form 1040).** The commercial real estate was rented through the date of sale.

Joan reports the income and expenses on Schedule E. She enters the net income on Form 1040.

**Form 4797.** The commercial real estate was sold on July 1, 2008, for \$280,000. The property was purchased in 2000 at a cost of \$250,000. It was depreciated using straight line depreciation, and the total depreciation allowed or allowable as of the date of sale was \$120,000. Additionally, \$25,000 of selling expenses were incurred. She reports the gain or loss from the sale on Form 4797. She completes the form and enters the gain on Schedule D (Form 1040).

Mr. Smith's former residence was sold on September 30, 2008. The sale price was \$200,000, the selling expenses were \$20,000, and his adjusted basis was \$130,000. Joan enters this information on Schedule D (Form 1040).

**Schedule D (Form 1040).** Joan completes Schedule D, taking into account the \$250,000 capital loss carryover from 2007 (\$251,500 transferred to the estate minus \$1,500 used on the estate's 2007 return). She enters the results on Form 1040.

**Form 1040, page 1.** Joan completes page 1 of the Form 1040 and enters the adjusted gross income on the first line of Form 1040, page 2.

**Schedule A (Form 1040).** During 2008, the estate paid mortgage interest and real property

tax on Mr. Smith's former residence. It also paid income tax to the state. Joan enters the mortgage interest, real estate tax, and income tax on Schedule A. Also, she reports the estate's administrative expenses as a miscellaneous deduction subject to the 2% floor. She completes the Schedule A and enters the result on page 2 of Form 1040.

**Form 1040, page 2.** Joan determines the estate's taxable income and figures its tax using the tax rate schedule for married filing separately. She then enters the estate's estimated tax payments and figures the amount the estate still owes.

**Form 982.** Joan completes the Schedule D Worksheet for capital loss carryover. Because \$70,000 of debt was canceled, Joan must reduce the tax attributes of the estate by the amount of the canceled debt. See *Debt Cancellation*, later. In 2008, Thomas Smith (the individual) will assume the estate's tax attributes. Mr. Smith will assume a capital loss carryover of \$3,500 (\$73,500 carryover minus the \$70,000 attribute reduction).

**Form 1041.** Joan enters the total tax, estimated tax payments, and tax due from Form 1040 on Form 1041. She completes the identification area at the top of Form 1041, then signs and dates the return.

**A** Type of entity (see instr.): For calendar year 2008 or fiscal year beginning , 2008, and ending , 20

Decedent's estate  
 Simple trust  
 Complex trust  
 Qualified disability trust  
 ESBT (S portion only)  
 Grantor type trust  
 Bankruptcy estate—Ch. 7  
 Bankruptcy estate—Ch. 11  
 Pooled income fund

Name of estate or trust (If a grantor type trust, see page 14 of the instructions.)  
 Thomas Smith Bankruptcy Estate

Name and title of fiduciary  
 Joan Black, Trustee

Number, street, and room or suite no. (If a P.O. box, see page 15 of the instructions.)  
 111 State Street

City or town, state, and ZIP code  
 Anywhere, Anystate, 00000

**C** Employer identification number  
 00 : 0000000

**D** Date entity created  
 12-15-2007

**E** Nonexempt charitable and split-interest trusts, check applicable boxes (see page 16 of the instr.):  
 Described in section 4947(a)(1)  
 Not a private foundation  
 Described in section 4947(a)(2)

**B** Number of Schedules K-1 attached (see instructions) ▶

**F** Check applicable boxes:  
 Initial return  Final return  Amended return  
 Change in fiduciary  Change in fiduciary's name

**G** Check here if the estate or filing trust made a section 645 election . . . . .

Income	1	Interest income . . . . .	1		
	2a	Total ordinary dividends . . . . .	2a		
	b	Qualified dividends allocable to: (1) Beneficiaries . . . . . (2) Estate or trust . . . . .			
	3	Business income or (loss). Attach Schedule C or C-EZ (Form 1040) . . . . .	3		
	4	Capital gain or (loss). Attach Schedule D (Form 1041) . . . . .	4		
	5	Rents, royalties, partnerships, other estates and trusts, etc. Attach Schedule E (Form 1040) . . . . .	5		
	6	Farm income or (loss). Attach Schedule F (Form 1040) . . . . .	6		
	7	Ordinary gain or (loss). Attach Form 4797 . . . . .	7		
	8	Other income. List type and amount . . . . .	8		
9	<b>Total income.</b> Combine lines 1, 2a, and 3 through 8 . . . . . ▶	9			
Deductions	10	Interest. Check if Form 4952 is attached ▶ <input type="checkbox"/> . . . . .	10		
	11	Taxes . . . . .	11		
	12	Fiduciary fees . . . . .	12		
	13	Charitable deduction (from Schedule A, line 7) . . . . .	13		
	14	Attorney, accountant, and return preparer fees . . . . .	14		
	15a	Other deductions <b>not</b> subject to the 2% floor (attach schedule) . . . . .	15a		
	b	Allowable miscellaneous itemized deductions subject to the 2% floor . . . . .	15b		
	16	Add lines 10 through 15b . . . . . ▶	16		
	17	Adjusted total income or (loss). Subtract line 16 from line 9 . . . . . [ 17 ]			
	18	Income distribution deduction (from Schedule B, line 15). Attach Schedules K-1 (Form 1041) . . . . .	18		
	19	Estate tax deduction including certain generation-skipping taxes (attach computation) . . . . .	19		
20	Exemption . . . . .	20			
21	Add lines 18 through 20 . . . . . ▶	21			
Tax and Payments	22	Taxable income. Subtract line 21 from line 17. If a loss, see page 23 of the instructions . . . . .	22		
	23	<b>Total tax</b> (from Schedule G, line 7) . . . . .	23		2,055
	24a	<b>Payments: a</b> 2008 estimated tax payments and amount applied from 2007 return . . . . .	24a		2,400
	b	Estimated tax payments allocated to beneficiaries (from Form 1041-T) . . . . .	24b		
	c	Subtract line 24b from line 24a . . . . .	24c		2,400
	d	Tax paid with Form 7004 (see page 24 of the instructions) . . . . .	24d		
	e	Federal income tax withheld. If any is from Form(s) 1099, check ▶ <input type="checkbox"/> . . . . .	24e		
	f	Other payments: f Form 2439 . . . . . ; g Form 4136 . . . . . ; Total ▶	24h		
	25	<b>Total payments.</b> Add lines 24c through 24e, and 24h . . . . . ▶	25		2,400
26	Estimated tax penalty (see page 24 of the instructions) . . . . .	26			
27	<b>Tax due.</b> If line 25 is smaller than the total of lines 23 and 26, enter amount owed . . . . .	27			
28	<b>Overpayment.</b> If line 25 is larger than the total of lines 23 and 26, enter amount overpaid. . . . .	28		345	
29	Amount of line 28 to be: <b>a Credited to 2009 estimated tax</b> ▶ ; <b>b Refunded</b> ▶	29		345	

**Sign Here** Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of fiduciary or officer representing fiduciary: Joan Black, Trustee Date: 2/15/2007 EIN of fiduciary if a financial institution: 00 : 0000001

May the IRS discuss this return with the preparer shown below (see instr.)?  Yes  No

**Paid Preparer's Use Only** Preparer's signature: Date: Check if self-employed  Preparer's SSN or PTIN: Firm's name (or yours if self-employed), address, and ZIP code: EIN: Phone no. ( )

# Attachment to Form 1041—DO NOT DETACH !!

Form **1040**

Department of the Treasury—Internal Revenue Service  
**U.S. Individual Income Tax Return 2008**

(99) IRS Use Only—Do not write or staple in this space.

**Label**  
(See instructions on page 14.)  
**Use the IRS label.**  
Otherwise, please print or type.

<b>L A B E L  H E R E</b>	For the year Jan. 1–Dec. 31, 2008, or other tax year beginning _____, 2008, ending _____, 20		OMB No. 1545-0074
	Your first name and initial <i>Thomas</i>	Last name <i>Smith Bankruptcy Estate</i>	
	If a joint return, spouse's first name and initial <i>Joan</i>	Last name <i>Black, Trustee</i>	
	Home address (number and street). If you have a P.O. box, see page 14. <i>111 State Street</i>		Apt. no.
City, town or post office, state, and ZIP code. If you have a foreign address, see page 14. <i>Anywhere, Anystate, 00000</i>			Your social security number <i>000 : 00 : 0000</i> Spouse's social security number <i>000 : 00 : 0001</i> ▲ You must enter your SSN(s) above. ▲

**Presidential Election Campaign** Check here if you, or your spouse if filing jointly, want \$3 to go to this fund (see page 14)  You  Spouse

**Filing Status**

1  Single

2  Married filing jointly (even if only one had income)

3  Married filing separately. Enter spouse's SSN above and full name here. ▶

4  Head of household (with qualifying person). (See page 15.) If the qualifying person is a child but not your dependent, enter this child's name here. ▶

5  Qualifying widow(er) with dependent child (see page 16)

**Exemptions**

6a  **Yourself.** If someone can claim you as a dependent, do not check box 6a

b  **Spouse**

c **Dependents:**

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) <input checked="" type="checkbox"/> if qualifying child for child tax credit (see page 17)
				<input type="checkbox"/>

d Total number of exemptions claimed 1

**Income**

7 Wages, salaries, tips, etc. Attach Form(s) W-2	7	
8a Taxable interest. Attach Schedule B if required	8a	5,500
b Tax-exempt interest. Do not include on line 8a	8b	
9a Ordinary dividends. Attach Schedule B if required	9a	
b Qualified dividends (see page 21)	9b	
10 Taxable refunds, credits, or offsets of state and local income taxes (see page 22)	10	
11 Alimony received	11	
12 Business income or (loss). Attach Schedule C or C-EZ	12	
13 Capital gain or (loss). Attach Schedule D if required. If not required, check here <input type="checkbox"/>	13	(1,500)
14 Other gains or (losses). Attach Form 4797	14	
15a IRA distributions	15a	
b Taxable amount (see page 23)	15b	
16a Pensions and annuities	16a	
b Taxable amount (see page 24)	16b	
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	40,000
18 Farm income or (loss). Attach Schedule F	18	
19 Unemployment compensation	19	
20a Social security benefits	20a	
b Taxable amount (see page 26)	20b	
21 Other income. List type and amount (see page 28)	21	
22 Add the amounts in the far right column for lines 7 through 21. This is your <b>total income</b> ▶	22	44,000

**Adjusted Gross Income**

23 Educator expenses (see page 28)	23	
24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25 Health savings account deduction. Attach Form 8889	25	
26 Moving expenses. Attach Form 3903	26	
27 One-half of self-employment tax. Attach Schedule SE	27	
28 Self-employed SEP, SIMPLE, and qualified plans	28	
29 Self-employed health insurance deduction (see page 29)	29	
30 Penalty on early withdrawal of savings	30	
31a Alimony paid b Recipient's SSN ▶	31a	
32 IRA deduction (see page 30)	32	
33 Student loan interest deduction (see page 33)	33	
34 Tuition and fees deduction. Attach Form 8917	34	
35 Domestic production activities deduction. Attach Form 8903	35	
36 Add lines 23 through 31a and 32 through 35	36	0
37 Subtract line 36 from line 22. This is your <b>adjusted gross income</b> ▶	37	44,000

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see page 88. Cat. No. 11320B Form **1040** (2008)

Tax and Credits

Standard Deduction for—

• People who checked any box on line 39a, 39b, or 39c or who can be claimed as a dependent, see page 34.

• All others: Single or Married filing separately, \$5,450

Married filing jointly or Qualifying widow(er), \$10,900

Head of household, \$8,000

38 Amount from line 37 (adjusted gross income) 38 44,000
39a Check if: [ ] You were born before January 2, 1944, [ ] Blind. Total boxes checked 39a
[ ] Spouse was born before January 2, 1944, [ ] Blind.
b If your spouse itemizes on a separate return or you were a dual-status alien, see page 34 and check here 39b
c Check if standard deduction includes real estate taxes or disaster loss (see page 34) 39c
40 Itemized deductions (from Schedule A) or your standard deduction (see left margin) 40 24,120
41 Subtract line 40 from line 38 41 19,880
42 If line 38 is over \$119,975, or you provided housing to a Midwestern displaced individual, see page 36. Otherwise, multiply \$3,500 by the total number of exemptions claimed on line 6d 42 3,500
43 Taxable income. Subtract line 42 from line 41. If line 42 is more than line 41, enter -0- 43 16,380
44 Tax (see page 36). Check if any tax is from: a [ ] Form(s) 8814 b [ ] Form 4972 44 2,055
45 Alternative minimum tax (see page 39). Attach Form 6251 45
46 Add lines 44 and 45 46
47 Foreign tax credit. Attach Form 1116 if required 47
48 Credit for child and dependent care expenses. Attach Form 2441 48
49 Credit for the elderly or the disabled. Attach Schedule R 49
50 Education credits. Attach Form 8863 50
51 Retirement savings contributions credit. Attach Form 8880 51
52 Child tax credit (see page 42). Attach Form 8901 if required 52
53 Credits from Form: a [ ] 8396 b [ ] 8839 c [ ] 5695 53
54 Other credits from Form: a [ ] 3800 b [ ] 8801 c [ ] 54
55 Add lines 47 through 54. These are your total credits 55
56 Subtract line 55 from line 46. If line 55 is more than line 46, enter -0- 56 2,055
57 Self-employment tax. Attach Schedule SE 57
58 Unreported social security and Medicare tax from Form: a [ ] 4137 b [ ] 8919 58
59 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required 59
60 Additional taxes: a [ ] AEIC payments b [ ] Household employment taxes. Attach Schedule H 60
61 Add lines 56 through 60. This is your total tax 61 2,055

Other Taxes

Payments

If you have a qualifying child, attach Schedule EIC.

62 Federal income tax withheld from Forms W-2 and 1099 62
63 2008 estimated tax payments and amount applied from 2007 return 63 2,400
64a Earned income credit (EIC) 64a
b Nontaxable combat pay election 64b
65 Excess social security and tier 1 RRTA tax withheld (see page 61) 65
66 Additional child tax credit. Attach Form 8812 66
67 Amount paid with request for extension to file (see page 61) 67
68 Credits from Form: a [ ] 2439 b [ ] 4136 c [ ] 8801 d [ ] 8885 68
69 First-time homebuyer credit. Attach Form 5405 69
70 Recovery rebate credit (see worksheet on pages 62 and 63) 70
71 Add lines 62 through 70. These are your total payments 71 2,400

Refund

Direct deposit? See page 63 and fill in 73b, 73c, and 73d, or Form 8888.

72 If line 71 is more than line 61, subtract line 61 from line 71. This is the amount you overpaid 72 345
73a Amount of line 72 you want refunded to you. If Form 8888 is attached, check here 73a 345
b Routing number [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] c Type: [ ] Checking [ ] Savings
d Account number [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ]
74 Amount of line 72 you want applied to your 2009 estimated tax 74

Amount You Owe

75 Amount you owe. Subtract line 71 from line 61. For details on how to pay, see page 65 75
76 Estimated tax penalty (see page 65) 76

Third Party Designee

Do you want to allow another person to discuss this return with the IRS (see page 66)? [ ] Yes. Complete the following. [ ] No

Designee's name [ ] Phone no. [ ] ( ) [ ] Personal identification number (PIN) [ ] [ ] [ ] [ ] [ ]

Sign Here

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Joint return? See page 15. Keep a copy for your records.

Your signature [ ] Date [ ] Your occupation [ ] Daytime phone number [ ] ( ) [ ]
Spouse's signature. If a joint return, both must sign. [ ] Date [ ] Spouse's occupation [ ]

Paid Preparer's Use Only

Preparer's signature [ ] Date [ ] Check if self-employed [ ] Preparer's SSN or PTIN [ ]
Firm's name (or yours if self-employed), address, and ZIP code [ ] EIN [ ] Phone no. [ ] ( ) [ ]

**SCHEDULES A&B**  
**(Form 1040)**

**Schedule A—Itemized Deductions**

OMB No. 1545-0074

**2008**

Attachment  
Sequence No. **07**

Department of the Treasury  
Internal Revenue Service (99)

▶ **Attach to Form 1040.** ▶ **See Instructions for Schedules A&B (Form 1040).**

Name(s) shown on Form 1040

Thomas Smith Bankruptcy Estate

Your social security number

000 : 00 : 0000

<b>Medical and Dental Expenses</b>	<b>Caution.</b> Do not include expenses reimbursed or paid by others.					
	1 Medical and dental expenses (see page A-1).	1				
	2 Enter amount from Form 1040, line 38	2				
	3 Multiply line 2 by 7.5% (.075)	3				
4 Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-				4		
<b>Taxes You Paid</b> (See page A-2.)	5 State and local (check only one box): a <input checked="" type="checkbox"/> Income taxes, or b <input type="checkbox"/> General sales taxes	5	1,000			
	6 Real estate taxes (see page A-5)	6	4,000			
	7 Personal property taxes	7				
	8 Other taxes. List type and amount ▶	8				
	9 Add lines 5 through 8	9			5,000	
<b>Interest You Paid</b> (See page A-5.)	10 Home mortgage interest and points reported to you on Form 1098	10	10,000			
	11 Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see page A-6 and show that person's name, identifying no., and address ▶	11				
	<b>Note.</b> Personal interest is not deductible.	12 Points not reported to you on Form 1098. See page A-6 for special rules.	12			
		13 Qualified mortgage insurance premiums (see page A-6)	13			
		14 Investment interest. Attach Form 4952 if required. (See page A-6.)	14			
	15 Add lines 10 through 14	15			10,000	
<b>Gifts to Charity</b> If you made a gift and got a benefit for it, see page A-7.	16 Gifts by cash or check. If you made any gift of \$250 or more, see page A-7	16				
	17 Other than by cash or check. If any gift of \$250 or more, see page A-8. You <b>must</b> attach Form 8283 if over \$500	17				
	18 Carryover from prior year	18				
	19 Add lines 16 through 18.	19				
<b>Casualty and Theft Losses</b>	20 Casualty or theft loss(es). Attach Form 4684. (See page A-8.)	20				
<b>Job Expenses and Certain Miscellaneous Deductions</b> (See page A-9.)	21 Unreimbursed employee expenses—job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See page A-9.) ▶	21				
	22 Tax preparation fees	22				
	23 Other expenses—investment, safe deposit box, etc. List type and amount ▶ <i>Bankruptcy Administrative Expenses</i>	23	10,000			
	24 Add lines 21 through 23	24	10,000			
	25 Enter amount from Form 1040, line 38	25	44,000			
	26 Multiply line 25 by 2% (.02)	26	880			
	27 Subtract line 26 from line 24. If line 26 is more than line 24, enter -0-	27			9,120	
<b>Other Miscellaneous Deductions</b>	28 Other—from list on page A-10. List type and amount ▶	28				
<b>Total Itemized Deductions</b>	29 Is Form 1040, line 38, over \$159,950 (over \$79,975 if married filing separately)? <input checked="" type="checkbox"/> <b>No.</b> Your deduction is not limited. Add the amounts in the far right column for lines 4 through 28. Also, enter this amount on Form 1040, line 40. <input type="checkbox"/> <b>Yes.</b> Your deduction may be limited. See page A-10 for the amount to enter.	29			24,120	
	30 If you elect to itemize deductions even though they are less than your standard deduction, check here					

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Cat. No. 11330X

Schedule A (Form 1040) 2008

Name(s) shown on Form 1040. Do not enter name and social security number if shown on other side.

Your social security number

Thomas Smith Bankruptcy Estate

000 00 0000

### Schedule B—Interest and Ordinary Dividends

Attachment Sequence No. **08**

#### Part I Interest

(See page B-1 and the instructions for Form 1040, line 8a.)

**Note.** If you received a Form 1099-INT, Form 1099-OID, or substitute statement from a brokerage firm, list the firm's name as the payer and enter the total interest shown on that form.

- 1** List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see page B-1 and list this interest first. Also, show that buyer's social security number and address ►  
Certificate of Deposit, XYZ Bank

		Amount	
<b>1</b>		5,500	
<b>2</b>	Add the amounts on line 1 . . . . .	5,500	
<b>3</b>	Excludable interest on series EE and I U.S. savings bonds issued after 1989. Attach Form 8815 . . . . .		
<b>4</b>	Subtract line 3 from line 2. Enter the result here and on Form 1040, line 8a ►	5,500	

**Note.** If line 4 is over \$1,500, you must complete Part III.

#### Part II Ordinary Dividends

(See page B-1 and the instructions for Form 1040, line 9a.)

**Note.** If you received a Form 1099-DIV or substitute statement from a brokerage firm, list the firm's name as the payer and enter the ordinary dividends shown on that form.

- 5** List name of payer ►

		Amount	
<b>5</b>			
<b>6</b>	Add the amounts on line 5. Enter the total here and on Form 1040, line 9a . ►		

**Note.** If line 6 is over \$1,500, you must complete Part III.

#### Part III Foreign Accounts and Trusts

(See page B-2.)

You must complete this part if you **(a)** had over \$1,500 of taxable interest or ordinary dividends; or **(b)** had a foreign account; or **(c)** received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

- 7a** At any time during 2008, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See page B-2 for exceptions and filing requirements for Form TD F 90-22.1 . . . . .
- b** If "Yes," enter the name of the foreign country ►
- 8** During 2008, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If "Yes," you may have to file Form 3520. See page B-2 . . . . .

Yes	No
	✓
	✓

For Paperwork Reduction Act Notice, see Form 1040 instructions.

Schedule B (Form 1040) 2008

**SCHEDULE D  
(Form 1040)**

Department of the Treasury  
Internal Revenue Service (99)

**Capital Gains and Losses**

▶ Attach to Form 1040 or Form 1040NR. ▶ See Instructions for Schedule D (Form 1040).

▶ Use Schedule D-1 to list additional transactions for lines 1 and 8.

OMB No. 1545-0074

**2008**

Attachment  
Sequence No. **12**

Name(s) shown on return

Thomas Smith Bankruptcy Estate

Your social security number

000 : 00 : 0000

**Part I Short-Term Capital Gains and Losses—Assets Held One Year or Less**

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-7 of the instructions)	(e) Cost or other basis (see page D-7 of the instructions)	(f) Gain or (loss) Subtract (e) from (d)
1					
2 Enter your short-term totals, if any, from Schedule D-1, line 2 . . . . .					
3 <b>Total short-term sales price amounts.</b> Add lines 1 and 2 in column (d) . . . . .					
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824					4
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 . . . . .					5
6 Short-term capital loss carryover. Enter the amount, if any, from line 8 of your <b>Capital Loss Carryover Worksheet</b> on page D-7 of the instructions . . . . .					6 ( )
7 <b>Net short-term capital gain or (loss).</b> Combine lines 1 through 6 in column (f) . . . . .					7

**Part II Long-Term Capital Gains and Losses—Assets Held More Than One Year**

(a) Description of property (Example: 100 sh. XYZ Co.)	(b) Date acquired (Mo., day, yr.)	(c) Date sold (Mo., day, yr.)	(d) Sales price (see page D-7 of the instructions)	(e) Cost or other basis (see page D-7 of the instructions)	(f) Gain or (loss) Subtract (e) from (d)
8					
9 Enter your long-term totals, if any, from Schedule D-1, line 9 . . . . .					
10 <b>Total long-term sales price amounts.</b> Add lines 8 and 9 in column (d) . . . . .					
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824 . . . . .					11 125,000
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1 . . . . .					12
13 Capital gain distributions. See page D-2 of the instructions . . . . .					13
14 Long-term capital loss carryover. Enter the amount, if any, from line 13 of your <b>Capital Loss Carryover Worksheet</b> on page D-7 of the instructions . . . . .					14 ( 250,000 )
15 <b>Net long-term capital gain or (loss).</b> Combine lines 8 through 14 in column (f). Then go to Part III on the back . . . . .					15 (125,000)

For Paperwork Reduction Act Notice, see Form 1040 or Form 1040NR instructions. Cat. No. 11338H Schedule D (Form 1040) 2008

**Part III Summary**

<p><b>16</b> Combine lines 7 and 15 and enter the result. . . . .</p> <p>If line 16 is:</p> <ul style="list-style-type: none"> <li>● A <b>gain</b>, enter the amount from line 16 on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below.</li> <li>● A <b>loss</b>, skip lines 17 through 20 below. Then go to line 21. Also be sure to complete line 22.</li> <li>● <b>Zero</b>, skip lines 17 through 21 below and enter -0- on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 22.</li> </ul>	<b>16</b>	(125,000)
<p><b>17</b> Are lines 15 and 16 <b>both</b> gains?</p> <p><input type="checkbox"/> <b>Yes.</b> Go to line 18.</p> <p><input type="checkbox"/> <b>No.</b> Skip lines 18 through 21, and go to line 22.</p>		
<p><b>18</b> Enter the amount, if any, from line 7 of the <b>28% Rate Gain Worksheet</b> on page D-8 of the instructions. . . . . ▶</p>	<b>18</b>	
<p><b>19</b> Enter the amount, if any, from line 18 of the <b>Unrecaptured Section 1250 Gain Worksheet</b> on page D-9 of the instructions . . . . . ▶</p>	<b>19</b>	
<p><b>20</b> Are lines 18 and 19 <b>both</b> zero or blank?</p> <p><input type="checkbox"/> <b>Yes.</b> Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the <b>Qualified Dividends and Capital Gain Tax Worksheet</b> on page 38 of the Instructions for Form 1040 (or in the Instructions for Form 1040NR). <b>Do not</b> complete lines 21 and 22 below.</p> <p><input type="checkbox"/> <b>No.</b> Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the <b>Schedule D Tax Worksheet</b> on page D-10 of the instructions. <b>Do not</b> complete lines 21 and 22 below.</p>		
<p><b>21</b> If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the <b>smaller</b> of:</p> <ul style="list-style-type: none"> <li>● The loss on line 16 or</li> <li>● (\$3,000), or if married filing separately, (\$1,500) } . . . . .</li> </ul> <p><b>Note.</b> When figuring which amount is smaller, treat both amounts as positive numbers.</p>	<b>21</b>	( 1,500 )
<p><b>22</b> Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b?</p> <p><input type="checkbox"/> <b>Yes.</b> Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the <b>Qualified Dividends and Capital Gain Tax Worksheet</b> on page 38 of the Instructions for Form 1040 (or in the Instructions for Form 1040NR).</p> <p><input checked="" type="checkbox"/> <b>No.</b> Complete the rest of Form 1040 or Form 1040NR.</p>		

**SCHEDULE E  
(Form 1040)**

Department of the Treasury  
Internal Revenue Service (99)

**Supplemental Income and Loss**

(From rental real estate, royalties, partnerships,  
S corporations, estates, trusts, REMICs, etc.)

▶ Attach to Form 1040, 1040NR, or Form 1041. ▶ See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

**2008**

Attachment  
Sequence No. **13**

Name(s) shown on return

Thomas Smith Bankruptcy Estate

Your social security number

000 : 00 : 0000

**Part I Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see page E-3). If you are an individual, report farm rental income or loss from Form 4835 on page 2, line 40.

1	List the type and address of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of:	Yes	No
A	Commercial Rental Real Estate Anywhere, Anystate, 00000		<ul style="list-style-type: none"> <li>• 14 days or</li> <li>• 10% of the total days rented at fair rental value?</li> </ul> (See page E-3)	A	✓
B				B	
C				C	

Income:	Properties			Totals (Add columns A, B, and C.)
	A	B	C	
3 Rents received . . . . .	3 75,000			3
4 Royalties received . . . . .	4			4
<b>Expenses:</b>				
5 Advertising . . . . .	5			
6 Auto and travel (see page E-4) . . . . .	6			
7 Cleaning and maintenance. . . . .	7			
8 Commissions . . . . .	8			
9 Insurance . . . . .	9			
10 Legal and other professional fees . . . . .	10			
11 Management fees. . . . .	11			
12 Mortgage interest paid to banks, etc. (see page E-5) . . . . .	12 10,000			12
13 Other interest . . . . .	13			
14 Repairs . . . . .	14			
15 Supplies . . . . .	15			
16 Taxes. . . . .	16 20,000			
17 Utilities . . . . .	17			
18 Other (list) ▶ . . . . .	18			
19 Add lines 5 through 18 . . . . .	19 30,000			19
20 Depreciation expense or depletion (see page E-5) . . . . .	20 5,000			20
21 Total expenses. Add lines 19 and 20 . . . . .	21 35,000			
22 Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see page E-5 to find out if you must file Form 6198 . . . . .	22 40,000			
23 Deductible rental real estate loss. <b>Caution.</b> Your rental real estate loss on line 22 may be limited. See page E-5 to find out if you must file Form 8582. Real estate professionals <b>must</b> complete line 43 on page 2 . . . . .	23 ( ) ( ) ( )			
24 <b>Income.</b> Add positive amounts shown on line 22. <b>Do not</b> include any losses . . . . .	24			40,000
25 <b>Losses.</b> Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here.	25 ( )			
26 <b>Total rental real estate and royalty income or (loss).</b> Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2 . . . . .	26			40,000

For Paperwork Reduction Act Notice, see page E-8 of the instructions.

Cat. No. 11344L

Schedule E (Form 1040) 2008

**Sales of Business Property**  
**(Also Involuntary Conversions and Recapture Amounts**  
**Under Sections 179 and 280F(b)(2))**

▶ **Attach to your tax return.**      ▶ **See separate instructions.**

Name(s) shown on return <i>Thomas Smith Bankruptcy Estate</i>	Identifying number <i>00-0000000</i>
--	---

1 Enter the gross proceeds from sales or exchanges reported to you for 2008 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) . . . . .	<b>1</b>	<i>280,000</i>
--	----------	----------------

**Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft—Most Property Held More Than 1 Year** (see instructions)

2	(a) Description of property	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)

3 Gain, if any, from Form 4684, line 45 . . . . .	<b>3</b>	
4 Section 1231 gain from installment sales from Form 6252, line 26 or 37 . . . . .	<b>4</b>	
5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824 . . . . .	<b>5</b>	
6 Gain, if any, from line 32, from other than casualty or theft. . . . .	<b>6</b>	<i>125,000</i>
7 Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows: . . . . .	<b>7</b>	<i>125,000</i>

**Partnerships (except electing large partnerships) and S corporations.** Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.

**Individuals, partners, S corporation shareholders, and all others.** If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.

8 Nonrecaptured net section 1231 losses from prior years (see instructions) . . . . .	<b>8</b>	
9 Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions) . . . . .	<b>9</b>	<i>125,000</i>

**Part II Ordinary Gains and Losses** (see instructions)

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):							

11 Loss, if any, from line 7 . . . . .	<b>11</b>	
12 Gain, if any, from line 7 or amount from line 8, if applicable . . . . .	<b>12</b>	
13 Gain, if any, from line 31 . . . . .	<b>13</b>	
14 Net gain or (loss) from Form 4684, lines 37 and 44a . . . . .	<b>14</b>	
15 Ordinary gain from installment sales from Form 6252, line 25 or 36 . . . . .	<b>15</b>	
16 Ordinary gain or (loss) from like-kind exchanges from Form 8824. . . . .	<b>16</b>	
17 Combine lines 10 through 16 . . . . .	<b>17</b>	

18 For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:		
a If the loss on line 11 includes a loss from Form 4684, line 41, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions . . . . .	<b>18a</b>	
b Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14	<b>18b</b>	

**Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255**  
(see instructions)

19 (a) Description of section 1245, 1250, 1252, 1254, or 1255 property:		(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)		
<b>A</b>	Commercial Real Estate - building	07-01-2000	07-01-2008		
<b>B</b>					
<b>C</b>					
<b>D</b>					
These columns relate to the properties on lines 19A through 19D. ▶		Property A	Property B	Property C	Property D
<b>20</b>	Gross sales price ( <b>Note:</b> See line 1 before completing. ) . . . . .	280,000			
<b>21</b>	Cost or other basis plus expense of sale . . . . .	275,000			
<b>22</b>	Depreciation (or depletion) allowed or allowable. . . . .	120,000			
<b>23</b>	Adjusted basis. Subtract line 22 from line 21. . . . .	155,000			
<b>24</b>	Total gain. Subtract line 23 from line 20 . . . . .	125,000			
<b>25 If section 1245 property:</b>					
<b>a</b>	Depreciation allowed or allowable from line 22 . . . . .	<b>25a</b>			
<b>b</b>	Enter the <b>smaller</b> of line 24 or 25a . . . . .	<b>25b</b>			
<b>26 If section 1250 property:</b> If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
<b>a</b>	Additional depreciation after 1975 (see instructions) . . . . .	<b>26a</b>			
<b>b</b>	Applicable percentage multiplied by the <b>smaller</b> of line 24 or line 26a (see instructions) . . . . .	<b>26b</b>			
<b>c</b>	Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e . . . . .	<b>26c</b>			
<b>d</b>	Additional depreciation after 1969 and before 1976. . . . .	<b>26d</b>			
<b>e</b>	Enter the <b>smaller</b> of line 26c or 26d . . . . .	<b>26e</b>			
<b>f</b>	Section 291 amount (corporations only) . . . . .	<b>26f</b>			
<b>g</b>	Add lines 26b, 26e, and 26f . . . . .	<b>26g</b>	0		
<b>27 If section 1252 property:</b> Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
<b>a</b>	Soil, water, and land clearing expenses . . . . .	<b>27a</b>			
<b>b</b>	Line 27a multiplied by applicable percentage (see instructions) . . . . .	<b>27b</b>			
<b>c</b>	Enter the <b>smaller</b> of line 24 or 27b . . . . .	<b>27c</b>			
<b>28 If section 1254 property:</b>					
<b>a</b>	Intangible drilling and development costs, expenditures for development of mines and other natural deposits, and mining exploration costs (see instructions) . . . . .	<b>28a</b>			
<b>b</b>	Enter the <b>smaller</b> of line 24 or 28a . . . . .	<b>28b</b>			
<b>29 If section 1255 property:</b>					
<b>a</b>	Applicable percentage of payments excluded from income under section 126 (see instructions) . . . . .	<b>29a</b>			
<b>b</b>	Enter the <b>smaller</b> of line 24 or 29a (see instructions) . . . . .	<b>29b</b>			

**Summary of Part III Gains.** Complete property columns A through D through line 29b before going to line 30.

<b>30</b>	Total gains for all properties. Add property columns A through D, line 24 . . . . .	<b>30</b>	125,000
<b>31</b>	Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13 . . . . .	<b>31</b>	0
<b>32</b>	Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 39. Enter the portion from other than casualty or theft on Form 4797, line 6 . . . . .	<b>32</b>	125,000

**Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less**  
(see instructions)

		(a) Section 179	(b) Section 280F(b)(2)
<b>33</b>	Section 179 expense deduction or depreciation allowable in prior years. . . . .	<b>33</b>	
<b>34</b>	Recomputed depreciation (see instructions) . . . . .	<b>34</b>	
<b>35</b>	Recapture amount. Subtract line 34 from line 33. See the instructions for where to report . . . . .	<b>35</b>	

**Depreciation and Amortization**  
**(Including Information on Listed Property)**

**2008**

Attachment  
 Sequence No. **67**

▶ See separate instructions. ▶ Attach to your tax return.

Name(s) shown on return Thomas Smith Bankruptcy Estate	Business or activity to which this form relates Commercial Rental Real Estate	Identifying number 00-0000000
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**Part I Election To Expense Certain Property Under Section 179**  
**Note: If you have any listed property, complete Part V before you complete Part I.**

1 Maximum amount. See the instructions for a higher limit for certain businesses . . . . .	<b>1</b>	\$250,000
2 Total cost of section 179 property placed in service (see instructions) . . . . .	<b>2</b>	
3 Threshold cost of section 179 property before reduction in limitation (see instructions) . . . . .	<b>3</b>	\$800,000
4 Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0- . . . . .	<b>4</b>	
5 Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions . . . . .	<b>5</b>	
<b>6</b>	<b>(a)</b>	<b>(b)</b>
(a) Description of property	(b) Cost (business use only)	(c) Elected cost
7 Listed property. Enter the amount from line 29 . . . . .	<b>7</b>	
8 Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7 . . . . .	<b>8</b>	
9 Tentative deduction. Enter the <b>smaller</b> of line 5 or line 8 . . . . .	<b>9</b>	
10 Carryover of disallowed deduction from line 13 of your 2007 Form 4562 . . . . .	<b>10</b>	
11 Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions) . . . . .	<b>11</b>	
12 Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11 . . . . .	<b>12</b>	
13 Carryover of disallowed deduction to 2009. Add lines 9 and 10, less line 12 ▶	<b>13</b>	

**Note: Do not use Part II or Part III below for listed property. Instead, use Part V.**

**Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.)** (See instructions.)

14 Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year (see instructions) . . . . .	<b>14</b>	
15 Property subject to section 168(f)(1) election . . . . .	<b>15</b>	
16 Other depreciation (including ACRS) . . . . .	<b>16</b>	5,000

**Part III MACRS Depreciation (Do not include listed property.)** (See instructions.)

**Section A**

17 MACRS deductions for assets placed in service in tax years beginning before 2008 . . . . .	<b>17</b>	
18 If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here . . . . . <input type="checkbox"/>		

**Section B—Assets Placed in Service During 2008 Tax Year Using the General Depreciation System**

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only—see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
<b>19a</b> 3-year property						
<b>b</b> 5-year property						
<b>c</b> 7-year property						
<b>d</b> 10-year property						
<b>e</b> 15-year property						
<b>f</b> 20-year property						
<b>g</b> 25-year property			25 yrs.		S/L	
<b>h</b> Residential rental property			27.5 yrs.	MM	S/L	
<b>i</b> Nonresidential real property			39 yrs.	MM	S/L	

**Section C—Assets Placed in Service During 2008 Tax Year Using the Alternative Depreciation System**

<b>20a</b> Class life					S/L	
<b>b</b> 12-year			12 yrs.		S/L	
<b>c</b> 40-year			40 yrs.	MM	S/L	

**Part IV Summary** (See instructions.)

21 Listed property. Enter amount from line 28 . . . . .	<b>21</b>	
22 <b>Total.</b> Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations—see instructions . . . . .	<b>22</b>	5,000
23 For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs . . . . .	<b>23</b>	

# Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)

▶ Attach this form to your income tax return.

Name shown on return

Thomas Smith Bankruptcy Estate

Identifying number

000-00-0000

## Part I General Information (see instructions)

- 1 Amount excluded is due to (check applicable box(es)):
  - a Discharge of indebtedness in a title 11 case.
  - b Discharge of indebtedness to the extent insolvent (not in a title 11 case)
  - c Discharge of qualified farm indebtedness
  - d Discharge of qualified real property business indebtedness
  - e Discharge of qualified principal residence indebtedness
  - f Discharge of certain indebtedness of a qualified individual because of Midwestern disasters
- 2 Total amount of discharged indebtedness excluded from gross income. **2** 70,000
- 3 Do you elect to treat all real property described in section 1221(a)(1), relating to property held for sale to customers in the ordinary course of a trade or business, as if it were depreciable property?  Yes  No

## Part II Reduction of Tax Attributes. You must attach a description of any transactions resulting in the reduction in basis under section 1017. See Regulations section 1.1017-1 for basis reduction ordering rules, and, if applicable, required partnership consent statements. (For additional information, see the instructions for Part II.)

### Enter amount excluded from gross income:

- |  |     |        |
|--|-----|--------|
| 4 For a discharge of qualified real property business indebtedness, applied to reduce the basis of depreciable real property   | 4   |        |
| 5 That you elect under section 108(b)(5) to apply first to reduce the basis (under section 1017) of depreciable property   | 5   |        |
| 6 Applied to reduce any net operating loss that occurred in the tax year of the discharge or carried over to the tax year of the discharge   | 6   |        |
| 7 Applied to reduce any general business credit carryover to or from the tax year of the discharge   | 7   |        |
| 8 Applied to reduce any minimum tax credit as of the beginning of the tax year immediately after the tax year of the discharge   | 8   |        |
| 9 Applied to reduce any net capital loss for the tax year of the discharge including any capital loss carryovers to the tax year of the discharge  | 9   | 70,000 |
| 10a Applied to reduce the basis of nondepreciable and depreciable property if not reduced on line 5. DO NOT use in the case of discharge of qualified farm indebtedness.   | 10a |        |
| b Applied to reduce the basis of your principal residence. Enter amount here ONLY if line 1e is checked  | 10b |        |
| 11 For a discharge of qualified farm indebtedness, applied to reduce the basis of: <ul style="list-style-type: none"> <li>a Depreciable property used or held for use in a trade or business, or for the production of income, if not reduced on line 5</li> <li>b Land used or held for use in a trade or business of farming</li> <li>c Other property used or held for use in a trade or business, or for the production of income</li> </ul> | 11a |        |
|  | 11b |        |
|  | 11c |        |
| 12 Applied to reduce any passive activity loss and credit carryovers from the tax year of the discharge  | 12  |        |
| 13 Applied to reduce any foreign tax credit carryover to or from the tax year of the discharge   | 13  |        |

## Part III Consent of Corporation to Adjustment of Basis of Its Property Under Section 1082(a)(2)

Under section 1081(b), the corporation named above has excluded \$ \_\_\_\_\_ from its gross income for the tax year beginning \_\_\_\_\_, and ending \_\_\_\_\_.

Under that section, the corporation consents to have the basis of its property adjusted in accordance with the regulations prescribed under section 1082(a)(2) in effect at the time of filing its income tax return for that year. The corporation is organized under the laws of \_\_\_\_\_.

(State of incorporation)

**Note.** You must attach a description of the transactions resulting in the nonrecognition of gain under section 1081.

# Capital Loss Carryover Worksheet—Lines 6 and 14

Use this worksheet to figure your capital loss carryovers from 2007 to 2008 if your 2007 Schedule D, line 21, is a loss and **(a)** that loss is a smaller loss than the loss on your 2007 Schedule D, line 16, **or (b)** the amount on your 2007 Form 1040, line 41 (or your 2007 Form 1040NR, line 38, if applicable) is less than zero. Otherwise, you do not have any carryovers.

1. Enter the amount from your 2007 Form 1040, line 41, or Form 1040NR, line 38. If a loss, enclose the amount in parentheses . . . . .	1.	<u>19,880</u>
2. Enter the loss from your 2007 Schedule D, line 21, as a positive amount . . . . .	2.	<u>1,500</u>
3. Combine lines 1 and 2. If zero or less, enter -0- . . . . .	3.	<u>21,380</u>
4. Enter the <b>smaller</b> of line 2 or line 3 . . . . .	4.	<u>1,500</u>
<b>If line 7 of your 2007 Schedule D is a loss, go to line 5; otherwise, enter -0- on line 5 and go to line 9.</b>		
5. Enter the loss from your 2007 Schedule D, line 7, as a positive amount . . . . .	5.	<u>0</u>
6. Enter any gain from your 2007 Schedule D, line 15. If a loss, enter -0- . . . . .	6.	<u>                    </u>
7. Add lines 4 and 6 . . . . .	7.	<u>1,500</u>
8. <b>Short-term capital loss carryover for 2008.</b> Subtract line 7 from line 5. If zero or less, enter -0-. If more than zero, also enter this amount on Schedule D, line 6 . . . . .	8.	<u>0</u>
<b>If line 15 of your 2007 Schedule D is a loss, go to line 9; otherwise, skip lines 9 through 13.</b>		
9. Enter the loss from your 2007 Schedule D, line 15, as a positive amount . . . . .	9.	<u>75,000</u>
10. Enter any gain from your 2007 Schedule D, line 7. If a loss, enter -0- . . . . .	10.	<u>0</u>
11. Subtract line 5 from line 4. If zero or less, enter -0- . . . . .	11.	<u>1,500</u>
12. Add lines 10 and 11 . . . . .	12.	<u>1,500</u>
13. <b>Long-term capital loss carryover for 2008.</b> Subtract line 12 from line 9. If zero or less, enter -0-. If more than zero, also enter this amount on Schedule D, line 14 . . . . .	13.	<u>73,500</u>

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# Partnerships and Corporations

A separate taxable estate is not created when a partnership or corporation files a bankruptcy petition. The court appointed trustee is, however, responsible for filing the regular income tax returns on Form 1065 or Form 1120.

## Partnerships

The filing requirements for a partnership in bankruptcy proceedings do not change. However, the filing of required returns becomes the responsibility of an appointed trustee, a receiver, or a debtor-in-possession rather than a general partner.

A partnership's debt that is canceled because of bankruptcy is not included in the partnership's income. It may or may not be included in the individual partners' income. See *Partnerships*, later under *Debt Cancellation*.

## Corporations

The following discussion covers only the highlights of the bankruptcy tax rules applying to corporations. Because the details of corporate bankruptcy reorganizations are beyond the scope of this publication, you may want to seek the help of a professional tax advisor.

See *Corporations* under *Debt Cancellation* for information about a corporation's debt canceled because of bankruptcy.

## Tax-Free Reorganizations

The tax-free reorganization provisions of the Internal Revenue Code apply to a transfer by a corporation of all or part of its assets to another corporation in a title 11 or similar case, but only if, under the reorganization plan, stock or securities of the corporation to which the assets are transferred are distributed in a transaction qualifying under IRC section 354, 355, or 356.

A "title 11 or similar case," for this purpose, is a bankruptcy case under title 11 of the United States Code, or a receivership, foreclosure, or similar proceeding in a federal or state court, but only if the corporation is under the jurisdiction of the court in the case and the transfer of assets is under a plan of reorganization approved by the court. In a receivership, foreclosure, or similar proceeding before a federal or state agency involving certain financial institutions, the agency is treated as a court.

Generally, IRC section 354 provides that no gain or loss is recognized if a corporation's stock is exchanged solely for stock or securities in the same or another corporation under a qualifying reorganization plan. In this case, shareholders in the bankrupt corporation would recognize no gain or loss if they exchange their stock solely for stock or securities of the corporation acquiring the bankrupt corporation's assets.

IRC section 355 generally provides that no gain or loss is recognized by a shareholder if a corporation distributes solely stock or securities of another corporation that the distributing corporation controls immediately before the distribution. IRC section 356 provides that in an exchange that would qualify under IRC section

354 or 355 except that other property or money besides the permitted stock or securities is received by the shareholder, gain is recognized by the shareholder only to the extent of the money and the FMV of the other property received. No loss is recognized in this situation.

## Filing Requirements

The filing requirements of a corporation involved in bankruptcy proceedings do not change. However, the filing of required returns becomes the responsibility of an appointed trustee, a receiver, or a debtor-in-possession, rather than a corporate officer. A bankruptcy trustee, receiver, or debtor-in-possession, having possession of or holding title to substantially all of the property or business of the debtor corporation, must file the debtor's corporate income tax return for the tax year.

**Exemption from tax return filing.** If you are a trustee, a receiver, or an assignee of a corporation that is in bankruptcy, receivership, or dissolution, or in the hands of an assignee by court order, you may apply to the IRS for relief from filing federal income tax returns for the corporation. To qualify, the corporation must have ceased business operations and must have neither assets nor income for the tax year. The exemption request must be submitted to the local IRS Insolvency office handling the case.

Your request to the IRS must include the name, address, and EIN of the corporation and a statement of the facts (with any supporting documents) showing why you need relief from the filing requirements. You must also include the following statement: "I hereby request relief from filing federal income tax returns for tax years ending \_\_\_\_\_ for the above-named corporation and declare under penalties of perjury that to the best of my knowledge and belief the information contained herein is correct." The statement must be signed by you, and you must include your notice of appointment to act on behalf of the corporation (unless you are a bankruptcy trustee or debtor-in-possession). The IRS will act on your request within 90 days.

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## Tax Determination and Payment

### Prompt Determination Requests

By following Rev. Proc. 2006-24, 2006-22 I.R.B. 943, [http://www.irs.gov/irb/2006-22\\_IRB/ar12.html](http://www.irs.gov/irb/2006-22_IRB/ar12.html), the bankruptcy trustee may request a determination of any unpaid tax liability incurred by the bankruptcy estate during the administration of the case by filing a tax return and a request for such a determination with the IRS. For cases filed after October 16, 2005, unless the return is fraudulent or contains a material misrepresentation, the estate, trustee, debtor, and any successor to the debtor are discharged from liability for the tax upon payment of the tax:

1. As determined by the IRS,

2. As determined by the bankruptcy court, after the completion of the IRS examination, or
3. As shown on the return, if the IRS does not:
  - a. Notify the trustee within 60 days after the request for the determination that the return has been selected for examination, or
  - b. Complete the examination and notify the trustee of any tax due within 180 days after the request (or any additional time permitted by the bankruptcy court).

For cases filed before October 17, 2005, the same rules apply, except that the bankruptcy estate is not discharged from the liability.

**Making the request for determination.** As detailed in Rev. Proc. 2006-24, to request a prompt determination of any unpaid tax liability of the estate, the trustee must file a signed written request, in duplicate, with the Centralized Insolvency Operation, P.O. Box 21126, Philadelphia, PA 19114 (marked "Request for Prompt Determination"). The request must be submitted in duplicate and must be executed under penalties of perjury. In addition, the trustee must submit with the request an exact copy of the return(s) filed by the trustee with the IRS for a completed tax period and must contain the following information:

- A statement indicating that it is a request for prompt determination of tax liability and specifying the type of return and tax period for each return being filed.
- The name and location of the office where the return was filed.
- The name of the debtor.
- Debtor's social security number, TIN, or EIN.
- Type of bankruptcy estate.
- Bankruptcy case number.
- Court where the bankruptcy is pending.

The copy of the return(s) submitted with the request **must** be an exact copy of a valid return. A request for prompt determination will be considered incomplete and returned to the trustee if it is filed with a copy of a document that does not qualify as a valid return. A document that does not qualify as a valid return includes a return form filed by the trustee with the jurat stricken, deleted, or modified. A return must be signed under penalties of perjury to qualify as a return.

The IRS examination function will notify the trustee within 60 days from receipt of the request whether the return filed by the trustee has been selected for examination or has been accepted as filed. If the return is selected for examination, it will be examined as soon as possible. The examination function will notify the trustee of any tax due within 180 days from receipt of the application or within any additional time permitted by the bankruptcy court.

If a prompt determination request is incomplete, all the documents received will be returned to the trustee by the Field Insolvency office assigned the request with an explanation identifying the missing item(s) and asking that

the request be refiled once corrected. An incomplete request includes one submitted with a copy of a return form, the original of which does not qualify as a valid return. Once corrected, the request must be filed with the IRS at the Field Insolvency address specified in the correspondence accompanying the incomplete request being returned. In the case of an incomplete request submitted with a copy of an invalid return document, the trustee must file a valid original return with the appropriate IRS office and submit a copy of that return with the corrected request when the request is refiled.

The 60-day period for notifying the trustee whether the return filed by the trustee is being selected for examination or is being accepted as filed does not begin to run until a complete request package is received by the IRS. If the IRS receives an incomplete request, the 60-day period for notifying the trustee whether the return filed by the trustee is being selected for examination or is being accepted as filed does not begin to run until a complete request is received by the Field Insolvency office specified by the IRS in its correspondence returning the incomplete request.

If the IRS does select the estate's return for examination, properly informs the trustee as explained above, and redetermines the tax shown on the return, the trustee may contest the IRS's determination in bankruptcy court. See *Bankruptcy court jurisdiction*, next.

**Bankruptcy court jurisdiction.** Generally, the bankruptcy court has authority to determine the amount or legality of any tax imposed on the debtor or the estate, including any fine, penalty, or addition to tax, whether or not the tax was previously assessed or paid.

***The bankruptcy court does not have authority:***

1. to determine the amount or legality of a tax, fine, penalty, or addition to tax that was contested before and adjudicated by a court or administrative tribunal of competent jurisdiction before the date of filing the bankruptcy petition, or
2. to decide the right of the bankruptcy estate to a tax refund until the trustee properly requests the refund from the IRS and either:
  - The IRS makes a determination about the refund,
  - 120 days have passed since the date of the trustee's request, or
  - A determination has been made by a governmental unit of such requests.

**Requests for refund or credit.** If the debtor has already claimed a refund or credit for an overpayment of tax on a properly filed return or claim for refund, the trustee may rely on that claim. Otherwise, if the credit or refund was not claimed by the debtor, the trustee may make the request, on behalf of the bankruptcy estate, by filing the appropriate original or amended return or form with the Advisory Group Manager within the Advisory, Insolvency, and Quality (AIQ) Office of the IRS area office having jurisdiction over the person for whom the trustee is acting.

The appropriate form for the trustee to use in making the claim for refund is as follows:

1. For income taxes for which an individual debtor had filed a Form 1040, Form 1040A, or Form 1040EZ, the trustee should use a Form 1040X.
2. For income taxes for which a corporate debtor had filed a Form 1120, the trustee should use a Form 1120X, Amended U.S. Corporation Income Tax Return.
3. For income taxes for which a debtor had filed a form other than Form 1040, Form 1040A, Form 1040EZ, or Form 1120, the trustee should use the same type of form that the debtor had originally filed, and write "Amended Return" at the top of the form.
4. For taxes other than certain excise taxes or income taxes for which the debtor had filed a return, the trustee should use a Form 843, Claim for Refund and Request for Abatement, attaching an exact copy of any return that is the subject of the claim along with a statement of the name and location of the office where the return was filed.
5. For excise taxes you reported on Forms 720, 730, or 2290, the trustee should use Form 8849, Claim for Refund of Excise Taxes, or Form 720X, Amended Quarterly Federal Excise Tax Return, whichever is appropriate.
6. For overpayment of taxes of the bankruptcy estate incurred during the administration of the case, the trustee may use a properly executed tax return (for income taxes, a Form 1041) as a claim for refund or credit.

Once the IRS examination function receives the trustee's claim for refund, it will examine the refund claim on an expedited basis and notify the trustee of its decision within 120 days from the date of the filing of the claim. If the trustee disagrees with the IRS's decision or does not receive a decision from the IRS within 120 days of filing the claim, the trustee may ask the bankruptcy court to determine the estate's right to the refund.

**Tax Court jurisdiction.** The filing of a bankruptcy petition automatically results in a stay against the commencement or continuation of certain Tax Court proceedings concerning the debtor. For bankruptcy cases begun before October 17, 2005, the scope of the stay varies depending on whether the debtor is an individual or a corporation. If the debtor is an individual and the bankruptcy case was filed after October 16, 2005, the scope of the stay varies depending on whether the debtor is an individual or a corporation. If the debtor is an individual and the bankruptcy case was filed after October 16, 2005, the stay prohibits the commencement of a Tax Court case concerning liabilities of the debtor for tax periods that ended before the bankruptcy order for relief (the date of the filing of the bankruptcy petition in voluntary cases). If the debtor is a corporation in a case filed after October 16, 2005, the stay prohibits the commencement or continuation of a Tax Court proceeding concerning any liabilities for tax periods of the debtor

that may be determined by the bankruptcy court; in chapter 11 cases of corporations, therefore, the bankruptcy court may generally determine the debtor corporation's tax liabilities for tax periods ending before the date a plan of reorganization is confirmed.

Because the bankruptcy court has the power to lift the stay and allow the debtor to begin or continue a Tax Court case, the bankruptcy court has, in effect, during the pendency of the stay, the sole authority to determine whether the tax issue is decided in bankruptcy court or in Tax Court.

**Suspension of time for filing.** In any bankruptcy case, the 90-day period for filing a Tax Court petition, after the issuance of the statutory notice of deficiency, is suspended for the time the debtor is prevented from filing the petition because of the bankruptcy case, and for an additional 60 days thereafter. This means that if the statutory notice was issued before the bankruptcy petition was filed, and the 90-day period had not expired, the running of the 90-day period will be suspended while the stay prevents the commencement of the Tax Court case. The 90-day period will begin to run again 60 days after the stay against filing the petition ends. The suspension exists if any part of the 90-day period remained at the date the bankruptcy petition was filed. The 90-day period for filing a Tax Court petition after issuance of a Notice of Determination in an innocent spouse case, however, is not suspended by the filing of a bankruptcy petition. Thus, if the IRS issues a final notice of determination denying the debtor's request for innocent spouse relief during the bankruptcy case, the debtor is prohibited from petitioning the Tax Court while the automatic stay is in effect. However, the 90-day period for petitioning the Tax Court is not suspended. The debtor must ask the bankruptcy court to lift the automatic stay before petitioning the Tax Court.

**Trustee may intervene.** The trustee of a bankruptcy estate in any title 11 bankruptcy case may intervene, on behalf of the estate, in any proceeding in the Tax Court to which the debtor is a party.

**Tax assessment.** Generally, the automatic stay rules prevent a creditor from taking actions to collect prepetition debts. However, the automatic stay does not apply to:

1. An audit to determine tax liability,
2. A demand for tax returns,
3. The issuance of a notice of deficiency to the debtor, or
4. The making of an assessment for any tax and the sending of a notice and demand for payment of the tax assessed (for bankruptcy cases filed after August 17, 2005).

Any tax lien that attaches to the estate's property because of an assessment described above can only take effect when the property (or its proceeds) is transferred back to the debtor. Also, the tax must be the debtor's debt that will not be discharged in the case.

**Disclosure of return information.** In bankruptcy cases other than those of individuals filing under chapter 7 or 11, current and earlier returns of the debtor are, upon written request, open to

inspection by or disclosure to the trustee or receiver, but only if the IRS finds that the trustee has a material interest that will be affected by information on the return. Material interest is generally defined as a financial or monetary interest. Material interest is not limited to the trustee's responsibility to file a return on behalf of the bankruptcy estate.

## Payment of Tax Claim

After the filing of a bankruptcy petition and during the period the debtor's assets or those of the bankruptcy estate are under the jurisdiction of the bankruptcy court, assets in the bankruptcy estate are not subject to levy. The IRS may file a proof of claim in the bankruptcy court the same way as other creditors. This claim may be filed in the bankruptcy court even though the taxes have not yet been assessed or are subject to a Tax Court proceeding.

**Secured tax claims.** If the IRS filed a notice of federal tax lien before the bankruptcy petition was filed, the IRS will have a secured claim to the extent the lien attached to equity in the debtor's assets and will be treated as such in the bankruptcy case. In chapter 7 cases, the trustee may be able to subordinate the tax lien to some extent to pay certain non-tax priority claims. For chapter 11 cases filed after October 16, 2005, if the secured claim would otherwise have been entitled to treatment as a priority claim, the chapter 11 plan must provide for the secured tax claim in the same manner and over the same period as an unsecured eighth priority tax claim.

**Eighth priority taxes.** In bankruptcy, the debtor's debts are assigned priorities for payment. Certain tax debts that arose before the bankruptcy case was filed are classified as eighth priority claims.

The following federal taxes, if unsecured, are eighth priority taxes of the government:

1. Income taxes on or measured by income or gross receipts for a tax year ending on or before the date of the filing of the petition for which a return, if required, is last due, including extensions, after 3 years before the date of the filing of the bankruptcy petition.
2. Income taxes on or measured by income or gross receipts assessed within 240 days before the date of the filing of the petition. The 240-day period is exclusive of any time during which an offer in compromise for that tax was pending or in effect during that 240-day period plus 30 days, and exclusive of any time during which a stay of proceedings against collections was in effect in a prior case during the 240-day period plus 90 days.
3. Income taxes that were not assessed before the bankruptcy petition date, but were assessable as of the petition date, unless these taxes were still assessable solely because no return was filed, a late return was filed within 2 years of the filing of the bankruptcy petition, a fraudulent return was filed, or because the debtor willfully attempted to evade or defeat the tax.

4. Withholding taxes that were incurred in any capacity.
5. Employer's share of employment taxes on wages, salaries, or commissions (including vacation, severance, and sick leave pay) paid as priority claims under 11 U.S.C. 507(a)(4), or for which a return was last due within 3 years of the filing of the bankruptcy petition, including a return for which an extension of the filing date was obtained.
6. Excise taxes on transactions occurring before the date of filing the bankruptcy petition, for which a return, if required, is last due (including extensions) within 3 years of the filing of the bankruptcy petition. If a return is not required, these excise taxes include only those on transactions occurring during the 3 years immediately before the date of filing the petition.

**Priority of payment.** For a chapter 7 case, the preceding eighth priority taxes may be paid out of the assets of the bankruptcy estate to the extent there are assets remaining after paying the claims of secured creditors and other creditors having higher priority claims.

Different rules apply to payment of eighth priority prepetition taxes under chapters 11, 12, and 13:

1. For chapter 11 cases filed before October 17, 2005, a chapter 11 plan can provide for payment of these taxes, with post-confirmation interest, over a period of 6 years from the date the taxes were assessed. For chapter 11 cases filed after October 16, 2005, a chapter 11 plan can provide for payment of these taxes, with post-confirmation interest, over a period of 5 years from the date of the bankruptcy order for relief (the bankruptcy petition date in voluntary cases), in a manner not less favorable than the most favored non-priority claims (except for convenience claims under section 1122(b) of the Bankruptcy Code).
2. In chapter 12, the debtor can pay such tax claims in deferred cash payments over time, except that for cases filed on or after April 20, 2005, certain priority taxes may be paid as general unsecured claims if they result from the disposition of a farm asset if the debtor receives discharge, and
3. In chapter 13, the debtor can pay such taxes over 3 years (or over 5 years with court approval).

Certain taxes are assigned a higher priority for payment. Taxes incurred during administration by the bankruptcy estate are given second priority treatment, as administrative expenses. Taxes arising in the ordinary course of your business or financial affairs in an involuntary bankruptcy case, after the filing of the bankruptcy petition but before the earlier of the appointment of a trustee or the order for relief, are included in the third priority payment category. If you have employees, your employees' portion of employment taxes on the first \$10,950 (this amount adjusted every 3 years) of wages that they earned during the 180-day period before

the date of your bankruptcy filing or the cessation of your business (whichever occurs first) is given fourth priority treatment. Your portion of the employment taxes on these wages, as the employer, is given eighth priority treatment.

**Relief from certain penalties.** A penalty for failure to pay tax, including failure to pay estimated tax, will not be imposed for any period during which a bankruptcy case is pending, under the following conditions. If the tax was incurred by the bankruptcy estate, the penalty will not be imposed if the failure to pay resulted from an order of the court finding probable insolvency of funds of the estate to pay administrative expenses. If the tax was incurred by you as the debtor, the penalty will not be imposed if:

1. The tax was incurred before the earlier of the order for relief or (in an involuntary case) the appointment of a trustee, and
2. The bankruptcy petition was filed before the due date for the tax return (including extensions) or the date for imposing the penalty occurs on or after the day the bankruptcy petition was filed.

This relief from the failure-to-pay penalty does not apply to any penalty for failure to pay or deposit tax withheld or collected from others and required to be paid over to the U.S. government. Nor does it apply to any penalty for failure to timely file a return.

**FUTA credit.** An employer is generally allowed a credit against FUTA for contributions made to a state unemployment fund, if the contributions are paid by the last day for filing an unemployment tax return for the tax year. If the contributions to the state fund are paid after that date, the credit shall not exceed 90% of the otherwise allowable credit that may be taken against FUTA.

However, for any unemployment tax on wages paid by the trustee of a title 11 bankruptcy estate, if the failure to pay the state unemployment contributions on time was without fault by the trustee, 100% of the credit is allowed.

**Statute of limitations for collection.** In a bankruptcy case, the period of limitations for collection of tax (generally, 10 years from the date of assessment) is suspended for the period during which the IRS is prohibited from collecting, plus 6 months thereafter.

## Discharge of Unpaid Tax

If you are a debtor in a bankruptcy case, the bankruptcy court may enter an order providing you with a discharge of debts. However, not all of your debts may be discharged. The scope of the bankruptcy discharge depends on the chapter you are in and the nature of the debt. Many tax debts are excepted from the bankruptcy discharge.

If you are an individual under chapter 7, the following tax debts, including interest, are not subject to discharge: taxes entitled to eighth priority, taxes for which no return was filed, taxes for which a return was filed late after 2 years before the bankruptcy petition was filed, taxes for which a fraudulent return was filed, and taxes that you willfully attempted to evade or defeat. Penalties in a chapter 7 case are dischargeable unless the event that gave rise to the penalty

occurred within 3 years of the bankruptcy and the penalty relates to a tax that is not discharged. Corporations and other entities that are not individuals do not receive a discharge in chapter 7 cases.

The same exceptions to discharge that apply to individuals in chapter 7 cases apply to individuals in chapter 11 cases. Different rules apply for corporations. A corporation in chapter 11 may receive a broad discharge when the plan is confirmed, but secured and priority claims must be satisfied under the plan and there is an exception to discharge for taxes for which the debtor filed a fraudulent return or willfully attempted to evade or defeat, for bankruptcy cases filed after October 16, 2005.

There are two types of discharge for individuals in chapter 13. A debtor who completes payments under the chapter 13 plan may receive a broad chapter 13 discharge of the debts provided for in the plan. However, priority tax claims must be paid in full under the chapter 13 plan, and for chapter 13 cases filed after October 16, 2005, the following taxes are excepted from the broad chapter 13 discharge: withholding taxes for which you are liable in any capacity, taxes for which no return was filed, taxes for which a return was filed late after 2 years before the bankruptcy petition was filed, taxes for which a fraudulent return was filed, and taxes that the debtor willfully attempted to evade or defeat. Further, for cases filed after October 16, 2005, there is an exception from discharge for debts where the creditor, including the IRS, did not receive notice of the chapter 13 case in time to file a claim.

A debtor that does not complete payment under a chapter 13 plan may, in some cases, be entitled to a discharge, but all the exceptions to discharge for individuals in chapter 7 cases would apply. The chapter 7 discharge exceptions also apply to individuals in chapter 12. The discharge for non-individuals in chapter 12 is similar to the pre-October 17, 2005, broad discharge an individual receives in chapter 13.

If a tax is discharged, the discharged tax may still be collectable from the debtor's pre-bankruptcy property if the IRS filed a Notice of Federal Tax Lien before the bankruptcy petition was filed. This is because perfected liens generally pass through bankruptcy unaffected, even if the debtor's personal liability for the debt is discharged. If the IRS did not file a Notice of Federal Tax Lien before the bankruptcy petition was filed, the tax lien will generally be removed from the debtor's pre-bankruptcy property as a result of the bankruptcy, even if the debtor emptied the property out of the bankruptcy estate. However, the tax lien that arises when a tax is assessed may not be removed if the property was excluded from the bankruptcy estate, even if a Notice of Federal Tax Lien was not filed, and never became estate property.

## Debt Cancellation

If a debt is canceled or forgiven, other than as a gift or bequest, the debtor generally must include the canceled amount in gross income for tax purposes. A debt includes any indebtedness for which the debtor is liable or that attaches to property the debtor holds. In the event that the

amount forgiven is \$600 or more, the debtor should receive a Form 1099-C, Cancellation of Debt, from the lender. See Form 1099-C and the separate instructions. The debtor may not have to report the entire amount of canceled debt as income, as a variety of exceptions may apply. See *Exceptions* and *Exclusions*, next.

## Exceptions

The exceptions include:

1. The cancellation of a student loan for a student required to work for certain employers. See *Canceled Debts* in Publication 525.
2. The cancellation of debt that would have been deductible if paid. See *Deductible Debt* under *Canceled Debts* in chapter 5 of Publication 334.
3. The reduction of a debt by the seller of property if the debt arose from the purchase of the property.

## Exclusions

Do not include a canceled debt in gross income if any of the following situations apply:

- The cancellation takes place in a bankruptcy case under the U.S. Bankruptcy Code. See *Bankruptcy case exclusion*, later.
- The cancellation takes place when the debtor is insolvent (see *Insolvency exclusion*, later), and the amount excluded is not more than the amount by which the debtor is insolvent.
- The canceled debt is qualified farm debt (debt incurred in operating a farm). See *Cancellation of Debt* in chapter 3 of Publication 225.
- The canceled debt is qualified real property business indebtedness (certain debt connected with business real property). See Publication 525.
- The canceled debt is qualified principal residence indebtedness (applies to debt canceled between January 1, 2007, and December 31, 2009). See IRC section 108(a)(1)(E).

**Order of exclusions.** If the cancellation of debt occurs in a title 11 bankruptcy case, the bankruptcy exclusion takes precedence over the insolvency, qualified farm debt, qualified real property business indebtedness, or qualified principal residence indebtedness exclusions.

To the extent that the taxpayer is insolvent, the insolvency exclusion takes precedence over qualified farm debt or qualified real property business indebtedness exclusions. The principal residence exclusion takes precedence over the insolvency exclusion, unless otherwise elected. See IRC section 108(a)(2)(C).

**Bankruptcy case exclusion.** A bankruptcy case is a case under title 11 of the United States Code, but only if the debtor is under the jurisdiction of the court and the cancellation of the debt is granted by the court or occurs as a result of a plan approved by the court.

None of the debt canceled in a bankruptcy case is included in the debtor's gross income in the year it was canceled. Instead, certain losses, credits, and basis of property must be reduced by the amount of excluded income (but not below zero). These losses, credits, and basis in property are called tax attributes and are discussed under *Reduction of Tax Attributes*, later.

**Insolvency exclusion.** A debtor is insolvent when, and to the extent, the debtor's liabilities exceed the FMV of the assets. Determine the debtor's liabilities and the FMV of the assets immediately before the cancellation of the debtor's debt to determine whether or not the debtor is insolvent and the amount by which the debtor is insolvent.

Exclude from the debtor's gross income debt canceled when the debtor is insolvent, but only up to the amount by which the debtor is insolvent. However, you must use the amount excluded to reduce certain tax attributes, as explained later under *Reduction of Tax Attributes*.

**Example.** \$4,000 of the Simpson Corporation's liabilities are canceled outside bankruptcy. Immediately before the cancellation, the Simpson Corporation's liabilities totaled \$21,000 and the FMV of its assets was \$17,500. Because its liabilities were more than its assets, it was insolvent. The amount of the insolvency was \$3,500 (\$21,000 - \$17,500). The corporation may exclude only \$3,500 of the \$4,000 debt cancellation from income because that is the amount by which it was insolvent. It must also reduce certain tax attributes by the \$3,500 of excluded income. The remaining \$500 of canceled debt must be included in income.

## Reduction of Tax Attributes

If a debtor excludes canceled debt from income because it is canceled in a bankruptcy case or during insolvency, he or she must use the excluded amount to reduce certain "tax attributes." Tax attributes include the basis of certain assets and the losses and credits listed later. By reducing the tax attributes, the tax on the canceled debt is partially postponed instead of being entirely forgiven. This prevents an excessive tax benefit from the debt cancellation.

If a separate bankruptcy estate was created, the trustee or debtor-in-possession must reduce the estate's attributes (but not below zero) by the canceled debt. See *Individuals under chapter 7 or chapter 11*, earlier.

**Order of reduction.** Generally, use the amount of canceled debt to reduce the tax attributes in the order listed below. However, the debtor may choose to use all or a part of the amount of canceled debt to first reduce the basis of depreciable property before reducing the other tax attributes. This choice is discussed later.

**Net operating loss.** Reduce any NOL for the tax year in which the debt cancellation takes place, and any NOL carryover to that tax year.

**General business credit carryovers.** Reduce any carryovers, to or from the tax year of the debt cancellation, of amounts used to determine the general business credit.

**Minimum tax credit.** Reduce any minimum tax credit that is available as of the beginning of the tax year following the tax year of the debt cancellation.

**Capital losses.** Reduce any net capital loss for the tax year of the debt cancellation, and any capital loss carryover to that year.

**Basis.** Reduce the basis of the debtor's property as described under *Basis Reduction*, later. This reduction applies to the basis of both depreciable and nondepreciable property.

**Passive activity loss and credit carryovers.** Reduce any passive activity loss or credit carryover from the tax year of the debt cancellation.

**Foreign tax credit.** Last, reduce any carryover, to or from the tax year of the debt cancellation, of an amount used to determine the foreign tax credit or the Puerto Rico and possession tax credit.

**Amount of reduction.** Except for the credit carryovers, reduce the tax attributes listed earlier 1 dollar for each dollar of canceled debt that is excluded from income. Reduce the credit carryovers by 33 $\frac{1}{3}$  cents for each dollar of canceled debt that is excluded from income.

**Making the reduction.** Make the required reductions in tax attributes after figuring the tax for the tax year of the debt cancellation. In reducing NOLs and capital losses, first reduce the loss for the tax year of the debt cancellation, and then any loss carryovers to that year in the order of the tax years from which the carryovers arose, starting with the earliest year. Make the reductions of credit carryovers in the order in which the carryovers are taken into account for the tax year of the debt cancellation.

**Individuals under chapter 7 or 11.** In an individual bankruptcy under chapter 7 or 11 of title 11, the required reduction of tax attributes must be made to the attributes of the bankruptcy estate, a separate taxable entity resulting from the filing of the case. Also, the trustee of the bankruptcy estate must make the choice of whether to reduce the basis of depreciable property first before reducing other tax attributes. See the discussion of *Taxes and the Bankruptcy Estate*, earlier.

## Basis Reduction

If any amount of the debt cancellation is used to reduce the basis of assets as discussed under *Reduction of Tax Attributes*, the following rules apply to the extent indicated.

**When to make the basis reduction.** Reductions in basis due to debt cancellation are made at the beginning of the tax year following the cancellation. The reduction applies to property held at that time. See Regulations section 1.1017-1 for more information.

**Bankruptcy and insolvency reduction limit.** The reduction in basis for canceled debt in bankruptcy or in insolvency cannot be more than the total basis of property held immediately after the debt cancellation, minus the total liabilities immediately after the cancellation. This limit does not apply if an election is made to reduce basis before reducing other attributes. This election is discussed later.

**Exempt property under title 11.** If debt is canceled in a bankruptcy case under title 11 of the United States Code, do not reduce the basis in property that the debtor treats as exempt property under section 522 of title 11.

**Election to reduce basis in depreciable property first.** The estate, in the case of an individual bankruptcy under chapter 7 or 11, may choose to reduce the basis of depreciable property before reducing any other tax attributes. However, this reduction of the basis of depreciable property cannot be more than the total basis of depreciable property held at the beginning of the tax year following the tax year of the debt cancellation.

Depreciable property means any property subject to depreciation, but only if a reduction of basis will reduce the amount of depreciation or amortization otherwise allowable for the period immediately following the basis reduction. The debtor may choose to treat as depreciable property any real property that is stock in trade or is held primarily for sale to customers in the ordinary course of trade or business. The debtor must generally make this choice on the tax return for the tax year of the debt cancellation, and, once made, the debtor can only revoke it with IRS approval. However, if the debtor establishes reasonable cause, the debtor may make the choice with an amended return or claim for refund or credit.

**Making elections.** Make the election to reduce the basis of depreciable property before reducing other tax attributes, as well as the election to treat real property inventory as depreciable property, on Form 982.

**Recapture of basis reductions.** If any basis in property is reduced under these provisions and is later sold or otherwise disposed of at a gain, the part of the gain corresponding to the basis reduction is taxable as ordinary income. Figure the ordinary income part by treating the amount of the basis reduction as a depreciation deduction and by treating any such basis-reduced property that is not already either IRC section 1245 or IRC section 1250 property as IRC section 1245 property. In the case of IRC section 1250 property, make the determination of what would have been straight line depreciation as though there had been no basis reduction for debt cancellation. IRC sections 1245 and 1250 and the recapture of gain as ordinary income are explained in Publication 544.

## Partnerships

If a partnership's debt is canceled because of bankruptcy or insolvency, the rules for the exclusion of the canceled amount from gross income and for tax attribute reduction are applied at the individual partner level. Thus, each partner's share of debt cancellation income must be reported on the partner's return unless the partner meets the bankruptcy or insolvency exclusions explained earlier. Then all choices, such as the choices to reduce the basis of depreciable property before reducing other tax attributes, to treat real property inventory as depreciable property, and to end the tax year on the day before filing the bankruptcy case, must be made by the individual partners, not the partnership.

**Depreciable property.** For purposes of reducing the basis of depreciable property in attribute reduction, a partner treats his or her partnership interest as depreciable property to the extent of the partner's proportionate interest in the partnership's depreciable property. This applies only if the partnership makes a corresponding reduction in the partnership's basis in its depreciable property with respect to the partner.

**Partner's basis in partnership.** The allocation of an amount of debt cancellation income to a partner results in that partner's basis in the partnership being increased by that amount. At the same time, the reduction in the partner's share of partnership liabilities caused by the debt cancellation results in a deemed distribution, in turn resulting in a reduction of the partner's basis in the partnership. These basis adjustments are separate from any basis reduction under the attribute-reduction rules described earlier.

## Corporations

Corporations in a bankruptcy proceeding or insolvency generally follow the same rules for debt cancellation and reduction of tax attributes as an individual or individual bankruptcy estate would follow.

## Stock for Debt Exchange

If a corporation transfers its stock (or if a partnership transfers an interest in the partnership) in satisfaction of indebtedness and the FMV of the stock or interest is less than the indebtedness owed, the corporation or partnership has income to the extent of the difference from the cancellation of indebtedness. The corporation or partnership can exclude all or a portion of the income created by the stock or interest debt transfer if it is in a bankruptcy proceeding or, if not in a bankruptcy proceeding, it can exclude the income to the extent it is insolvent. However, the corporation or partnership must reduce its tax attributes to the extent it has any by the amount of the excluded income.

**Stock for debt exception.** The stock for debt exception was repealed for transfers made after 1994 unless the corporation filed for bankruptcy (or similar court proceeding) before 1994. Generally, before 1995, a corporation did not realize income because of such stock for debt exchanges if it was in bankruptcy or to the extent it was insolvent. Consequently, there was no gross income to exclude and no reduction of its tax attributes was necessary. The principal difference between the stock for debt exception and the stock for debt exchange is that the corporation does not reduce its tax attributes under the stock for debt exception.

## Earnings and profits

The earnings and profits of a corporation do not include income from the discharge of indebtedness to the extent of the amount applied to reduce the basis of the corporation's property as explained earlier. Otherwise, discharge of indebtedness income, including amounts excluded from gross income, increases the

earnings and profits of the corporation (or reduces a deficit in earnings and profits).

If there is a deficit in the corporation's earnings and profits and the interest of any shareholder of the corporation is terminated or extinguished in a title 11 or similar case (defined earlier), the deficit must be reduced by an amount equal to the paid-in capital allocable to the shareholder's terminated or extinguished interest.

## S Corporations

For S corporations, the rules for excluding income from debt cancellation because of bankruptcy or insolvency apply at the corporate level.

**Net operating losses.** A loss or deduction that is disallowed for the tax year of the debt cancellation because it exceeds the shareholders' basis in the corporation's stock and debt is treated as an NOL for that tax year in making the required reduction of tax attributes for the amount of the canceled debt.

## Tax Attribute Reduction Example

The sample filled-in Form 982 shown on the next page is based on the following situation.

Tom Smith is in financial difficulty, but he has been able to avoid declaring bankruptcy. In 2007, he reached an agreement with his creditors whereby they agreed to forgive \$10,000 of the total that he owed them in return for his setting up a schedule for repayment of the rest of his debts.

Immediately before the debt cancellation, Tom's liabilities totaled \$120,000 and the FMV of his assets was \$100,000 (his total basis in all these assets was \$90,000). At the time of the debt cancellation, he was considered insolvent by \$20,000. He can exclude from income the entire \$10,000 debt cancellation because it was not more than the amount by which he was insolvent.

Among Tom's assets, the only depreciable asset is a rental condominium with an adjusted basis of \$50,000. Of this, \$10,000 is allocable to the land, leaving a depreciable basis of \$40,000. He has a long-term capital loss carryover to 2008 of \$5,000. He also has an NOL of \$2,000 and a \$3,000 NOL carryover from 2005. He has no other tax attributes arising from the current tax year or carried to this year.

Ordinarily, in applying the \$10,000 debt cancellation amount to reduce tax attributes, Tom would first reduce his \$2,000 NOL, next, his \$3,000 NOL carryover from 2005, and then his \$5,000 net capital loss carryover. However, he figures that it is better for him to preserve his loss carryovers for the next tax year.

Tom elects to reduce basis first. He can reduce the depreciable basis of his rental condominium (his only depreciable asset) by \$10,000. The tax effect of doing this will be to reduce his depreciation deductions for years following the year of the debt cancellation. However, if he later sells the condominium at a gain, the part of the gain from the basis reduction will be taxable as ordinary income.

Tom must file Form 982, as shown here, with his individual return (Form 1040) for the tax year of the debt discharge. In addition, he must attach a statement describing the debt cancellation transaction and identifying the property to which the basis reduction applies. This statement is not illustrated.

# Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment)

Department of the Treasury  
Internal Revenue Service

▶ **Attach this form to your income tax return.**

Attachment  
Sequence No. **94**

Name shown on return  
Tom Smith

Identifying number  
000-00-00000

**Part I** General Information (see instructions)

- 1 Amount excluded is due to (check applicable box(es)):
  - a Discharge of indebtedness in a title 11 case
  - b Discharge of indebtedness to the extent insolvent (not in a title 11 case)
  - c Discharge of qualified farm indebtedness
  - d Discharge of qualified real property business indebtedness
  - e Discharge of qualified principal residence indebtedness
  - f Discharge of certain indebtedness of a qualified individual because of Midwestern disasters
- 2 Total amount of discharged indebtedness excluded from gross income 2 10,000
- 3 Do you elect to treat all real property described in section 1221(a)(1), relating to property held for sale to customers in the ordinary course of a trade or business, as if it were depreciable property?  Yes  No

**Part II** Reduction of Tax Attributes. You must attach a description of any transactions resulting in the reduction in basis under section 1017. See Regulations section 1.1017-1 for basis reduction ordering rules, and, if applicable, required partnership consent statements. (For additional information, see the instructions for Part II.)

Enter amount excluded from gross income:			
4	For a discharge of qualified real property business indebtedness, applied to reduce the basis of depreciable real property	4	
5	That you elect under section 108(b)(5) to apply first to reduce the basis (under section 1017) of depreciable property	5	10,000
6	Applied to reduce any net operating loss that occurred in the tax year of the discharge or carried over to the tax year of the discharge	6	
7	Applied to reduce any general business credit carryover to or from the tax year of the discharge	7	
8	Applied to reduce any minimum tax credit as of the beginning of the tax year immediately after the tax year of the discharge	8	
9	Applied to reduce any net capital loss for the tax year of the discharge including any capital loss carryovers to the tax year of the discharge	9	
10a	Applied to reduce the basis of nondepreciable and depreciable property if not reduced on line 5. <i>DO NOT use in the case of discharge of qualified farm indebtedness.</i>	10a	
b	Applied to reduce the basis of your principal residence. <i>Enter amount here ONLY if line 1e is checked</i>	10b	
11	For a discharge of qualified farm indebtedness, applied to reduce the basis of:		
a	Depreciable property used or held for use in a trade or business, or for the production of income, if not reduced on line 5	11a	
b	Land used or held for use in a trade or business of farming	11b	
c	Other property used or held for use in a trade or business, or for the production of income	11c	
12	Applied to reduce any passive activity loss and credit carryovers from the tax year of the discharge	12	
13	Applied to reduce any foreign tax credit carryover to or from the tax year of the discharge	13	

**Part III** Consent of Corporation to Adjustment of Basis of Its Property Under Section 1082(a)(2)

Under section 1081(b), the corporation named above has excluded \$ \_\_\_\_\_ from its gross income for the tax year beginning \_\_\_\_\_, and ending \_\_\_\_\_.

Under that section, the corporation consents to have the basis of its property adjusted in accordance with the regulations prescribed under section 1082(a)(2) in effect at the time of filing its income tax return for that year. The corporation is organized under the laws of \_\_\_\_\_.

(State of incorporation)

**Note.** You must attach a description of the transactions resulting in the nonrecognition of gain under section 1081.

## How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

### Contacting the Taxpayer Advocate Service.

The Taxpayer Advocate Service is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should.

You can contact the Taxpayer Advocate Service by calling toll-free 1-877-777-4778 or TTY/TTD 1-800-829-4059 to see if you are eligible for assistance. You can also call or write to your local taxpayer advocate, whose phone number and address are listed in your local telephone directory and in Publication 1546, Taxpayer Advocate Service – Your Voice at the IRS. You can file Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order), or ask an IRS employee to complete it on your behalf. For more information, go to [www.irs.gov/advocate](http://www.irs.gov/advocate).

**Taxpayer Advocacy Panel (TAP).** The TAP listens to taxpayers, identifies taxpayer issues, and makes suggestions for improving IRS services and customer satisfaction. If you have suggestions for improvements, contact the TAP toll-free at 1-888-912-1227 or go to [www.improveirs.org](http://www.improveirs.org).

**Low income tax clinics (LITCs).** LITCs are independent organizations that provide low income taxpayers with representation in federal tax controversies with the IRS for free or for a nominal charge. The clinics also provide tax education and outreach for taxpayers who speak English as a second language. Publication 4134, Low Income Taxpayer Clinic List, provides information on clinics in your area. It is available at [www.irs.gov](http://www.irs.gov) or at your local IRS office.

**Free tax services.** To find out what services are available, get Publication 910, IRS Guide to Free Tax Services. It contains a list of free tax publications and describes other free tax information services, including tax education and assistance programs and a list of TeleTax topics.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.



**Internet.** You can access the IRS website at [www.irs.gov](http://www.irs.gov) 24 hours a day, 7 days a week to:

- *E-file* your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Check the status of your 2008 refund. Click on *Where's My Refund*. Wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically). Have your 2008 tax return available because you will need to know your social

security number, your filing status, and the exact whole dollar amount of your refund.

- Download forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- View Internal Revenue Bulletins published in the last few years.
- Figure your withholding allowances using our withholding calculator, [www.irs.gov/individuals](http://www.irs.gov/individuals).
- Determine if Form 6251 must be filed using our Alternative Minimum Tax (AMT) Assistant.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.



**Phone.** Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-829-3676 to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.
- *Asking tax questions.* Call the IRS with your tax questions at 1-800-829-1040.
- *Solving problems.* You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to [www.irs.gov/localcontacts](http://www.irs.gov/localcontacts) or look in the phone book under *United States Government, Internal Revenue Service*.
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.
- *Refund information.* To check the status of your 2008 refund, call 1-800-829-4477 and press 1 for automated refund information or call 1-800-829-1954. Be sure to wait at least 6 weeks from the date you filed your return (3 weeks if you filed electronically). Have your 2008 tax return available because you will need to know your social security number, your filing status, and the exact whole dollar amount of your refund.

**Evaluating the quality of our telephone services.** To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.



**Walk-in.** Many products and services are available on a walk-in basis.

- *Products.* You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- *Services.* You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you're more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary, but if you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. To find the number, go to [www.irs.gov/localcontacts](http://www.irs.gov/localcontacts) or look in the phone book under *United States Government, Internal Revenue Service*.



**Mail.** You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 business days after your request is received.

IRS National Distribution Center  
1201 North Mitsubishi Motorway  
Bloomington, IL 61704-6613



**DVD for tax products.** You can order Publication 1796, IRS Tax Products DVD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax Law frequently asked questions.
- Tax Topics from the IRS telephone response system.

- Internal Revenue Code — Title 26.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.

The DVD is released twice during the year:

- The first release will ship the beginning of January of the filing year.
- The final release will ship the beginning of March of the same year.

Purchase the DVD from National Technical Information Service (NTIS) at [www.irs.gov/cdorders](http://www.irs.gov/cdorders) for \$30 (no handling fee) or call 1-877-CDFORMS (1-877-233-6767) toll free to

buy the DVD for \$30 (plus a \$5 handling fee). Price is subject to change.



**Small Business Resource Guide 2009.** This online guide is a must for every small business owner or any taxpayer about to start a business. This year's guide includes:

- Helpful information, such as how to prepare a business plan, find financing for your business, and much more.
- All the business tax forms, instructions, and publications needed to successfully manage a business.
- Tax law changes for 2009.
- Tax Map: an electronic research tool and finding aid.

- Web links to various government agencies, business associations, and IRS organizations.
- “Rate the Product” survey—your opportunity to suggest changes for future editions.
- A site map of the guide to help you navigate the pages with ease.
- An interactive “Teens in Biz” module that gives practical tips for teens about starting their own business, creating a business plan, and filing taxes.

The information is updated during the year. Visit [www.irs.gov](http://www.irs.gov) and enter keyword “SBRG” in the upper right-hand corner for more information.



To help us develop a more useful index, please let us know if you have ideas for index entries. See “Comments and Suggestions” in the “Introduction” for the ways you can reach us.

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